141-415 Oct, 29

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1543~~ 969

THE LEADVILLE COAL COMPANY, CHARLES S. WORDEN, GEORGE M. AYER, AND AMY G. AYER, APPELLANTS,

vs.

WILLIAM McCREERY, HENRY TOD, C. C. BALDWIN, AND CECIL D. HINE, TRUSTEES, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED NOVEMBER 3, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1543.

THE LEADVILLE COAL COMPANY, CHARLES S. WORDEN, GEORGE M. AYER, AND AMY G. AYER, APPELLANTS,

vs.

WILLIAM McCREERY, HENRY TOD, C. C. BALDWIN, AND CECIL D. HINE, TRUSTEES, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Original bill	1	1
Order appointing receiver	5	3
Inventory and schedule of property by receiver	8	5
Supplemental bill	11	7
Order for all creditors to file claims	15	9
Order *pro confesso*	16	9
Appointment of A. J. Ricks master	17	9
Pleas of Brown, Bonnell & Company	18	10
Answer and cross-bill Commercial Nat'l Bank *et al.*	20	11
Exhibits A to X and 1 to 10—Promissory notes	35	19
Z—Appointment of Henry Crawford, October 20, 1883	45	28
11—Deed between Brown, Bonnell & Co. and Dan. P. Eells & John Hay, April 3, 1882	45	29
Z—Appointment of Henry Crawford, October 20, 1883	64	39
Motion to discharge receiver	65	39
Order overruling motion	66	39
Response of divers creditors to petition of Commercial National Bank	67	40
Exhibit A—Resolution of April 3, 1882	73	43
Proceedings board directors, December 29, 1882	75	45
Schedule of judgments and costs in sundry cases	76	46
Master's report	78	47

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1890.

	Original.	Print.
Exhibit A—Schedule of creditors of Brown, Bonnell & Co.	81	50
Supplemental report of master	85	58
Order approving master's report on claims	87½	59
Master's report on intervening petition of Commercial National Bank *et al.*	88	66
Exceptions of Charles S. Worden *et al.* to master's report	100	66
Order sustaining exceptions to master's report on intervening petition Commercial National Bank	105	68
Decree of sale	107	68
Petition suggesting dissolution of Brown, Bonnell & Company	132	82
Order of court thereon	136	84
Report of Special Master Goodspeed	137	83
Proof of publication and notice	138	85
Exceptions of Charles S. Worden and Leadville Coal Company to confirmation	140	93
Exhibit A—Agreement of creditors April 29, 1884	144	95
Exceptions of George M. Ayer and Amy G. Ayer to confirmation	152	99
Affidavit of Henry Crawford	153	100
Record of common pleas court Mahoning county, showing dissolution of corporation	156	101
Docket entries	156	101
Order to show cause	159	103
Order granting leave to amend petition, &c.	160	104
Order extending time to show cause	160	104
Order granting leave to withdraw answer, &c.	161	104
Order on petitioners to furnish bail	162	105
Order extending time to file statements	162	105
Order of reference	162	106
Order of continuance	163	106
Order confirming report of referee, &c.	163	106
Petition for dissolution of corporation	166	107
Order to show cause	169	109
Sheriff's return	170	110
Amendment to petition	171	110
Clerk's certificate as to withdrawal of answer	173	111
Reply of petitioners	173	112
Præcipe for order to file statement	176	113
Order to file statement	176	114
Sheriff's return	178	114
Referee's notice and proof of publication	178	115
Report of referee	179	116
Exhibit D—Statement of personal property	191	121
Clerk's certificate as to loss of motion to dismiss	191	122
Appeal bond	192	122
Clerk's certificate	193	123
Motion to strike exceptions from files	194	123
Affidavit of Henry Tod	195	124
John H. Clarke	197	124
Motion for confirmation, &c.	199	125
Opinion	200	126
Petition of Leadville Coal Company *et al.*	213	132
Record of common pleas court of Mahoning county in Worden *vs.* Leadville Coal Company *et al.*	219	135

	Original.	Print.
Docket entries	219	135
Order appointing receiver, &c.	224	137
Order for receiver to take possession, &c.	225	138
Order to receiver to sell machinery, &c.	225	138
Decree	226	139
Order on receiver to cancel leases	230	141
Order on receiver to surrender lease, &c.	231	141
Order approving receiver's reports, &c.	231	141
Order on receiver to pay over money, &c.	232	141
Order to cancel order to sell machinery, &c.	233	142
Order on receiver to sell property, &c.	234	143
Order confirming receiver's report, &c.	235	143
Order on receiver to sell judgment and claim	237	144
Order setting aside order to sell judgment, &c.	238	145
Order approving receiver's report, &c.	239	145
Petition	241	146
Præcipe for summons	246	149
Waiver of process and appearance	247	149
Summons	248	149
Sheriff's return	248	149
Receiver's bond	250	150
Receiver's oath	250	151
Statement of assets	251	151
Statement of personal property	252	151
Statement of receipts and disbursements	253	152
Order on receiver's report	261	159
Inventory and appraisement	263	160
Report of appraisement	264	161
Receiver's reports	266	162
Clerk's certificate	269	164
Answer of Lake Superior Iron Company *et al.* to petition of Leadville Coal Company *et al.*	270	164
Answer of Greenville National Bank *et al.* to petition of Leadville Coal Company *et al.*	274	166
Petition of Henry Crawford	276	167
Decree confirming sale, October 1, 1890	280	169
Order allowing appeal	285	172
Appeal bond	286	172
Clerk's certificate	289	173

1 Be it remembered that heretofore, to wit, on the 20th day of February, A. D. 1883, a bill was filed in this cause, and which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio, Eastern Division.

To the honorable judges of the circuit court of said district and division:

The Lake Superior Iron Company, a corporation duly incorporated under and by virtue of the laws of the State of Michigan and a citizen of said State of Michigan; Jackson Iron Company, a corporation duly incorporated under and by virtue of the laws of the State of Michigan and a citizen of said State of Michigan, and the Negaunee Concentrating Company, a corporation incorporated under the laws of the State of New York and a citizen of said State of New York, bring this their bill of complaint against Brown, Bonnell and Company, a corporation duly incorporated under and by virtue of the laws of the State of Ohio and a citizen of said State of Ohio; and thereupon your orators complain and say that they are respectively creditors in large amounts of said defendant corporation—that is to say, the said defendant corporation is indebted to the said Lake Superior Iron Company in the sum of thirteen thousand seven hundred and seventy-six dollars and seventy-five one-hundredths, such indebtedness being evidenced by their promissory notes executed and delivered to the said Lake Superior Iron Company by said defendant, each of the amount — four thousand five hundred and ninety-two and twenty-five one-hundredths dollars, said notes being
2 dated respectively October twentieth, eighteen — eighty-two, November 20th, 1882, and December 20th, 1882, each payable in four months from the date thereof. The said defendant is indebted to the said Jackson Iron Company in the sum of $14,723.80, such indebtedness being evidenced by two promissory notes of $7,361.90 each and dated December 7th, 1882, and payable in three and four months from date, and the said defendant is indebted to the Negaunee Concentrating Company in the amount of $5,110.40, which said indebtedness is evidenced by a judgment against said defendant, dated February 20th, A. D. 1883, rendered in said circuit court.

And your orators, further complaining, not only in their own behalf, but in behalf of all other creditors of said defendant whom it is possible to make parties to this bill of complaint, on account of the great number, say that said defendant corporation is insolvent; that said defendant has for a long time been engaged in the business of manufacturing iron, and in such business *have* erected blast furnaces, rolling mills, coke mills, and opened and operated coal mines; that the plant of said corporation has been and is of very great value; that the good will of said plant and business of said defendant has been and *are* of great value; and your orators further say

that said defendant employs operatives in *their* said mills to the number of at least four thousand.

And your orators further say that vexatious litigation has been commenced against the said defendant and many more such are threatened, and that such litigations are accompanied by attachments and seizures of property, and such threatened litigations will also be accompanied by attachments and seizures, and that such attachments and seizures will give to those creditors who are pursuing them undue and unfair advantage and priority over your complainants, whose claims are not yet due, and make them irreparable injury and damages; that if such litigations should be further
3 instituted and its property seized in attachment, as it already has been, there is great danger that the valuable property of the defendant will be irreparably injured and to a great extent destroyed; and your orators say that such seizures and interference with the business and the property of the defendant, would wholly destroy the value of the good will of the company as an asset and wholly break up its long-established business, and thereby cause distress and irreparable injury to your orators and all other creditors.

And your orators further say that unless this court shall interfere and protect and preserve the property and assets of said defendant by putting it into the hands of a receiver the said property will be in great danger of destruction and dissipation by the large number of operatives who would necessarily be discharged and left without work or means of obtaining it, and such operatives, by reason of the great distrust they already have and on account of a fear that they will not in future receive remuneration, will abandon their employment and thereby cause a stoppage of the extensive business of said defendant to the extent that the creditors of said defendant would not be able to realize one-half the amount upon the several claims that they would if the said business of the defendent were continued.

And your orators therefore pray process of subpœna against the said Brown, Bonnell and Company that it may make answer to all the matters and things set forth in this bill of complaint, and that a proper person may be appointed by and under the decree and direction of this honorable court to take charge of the property and assets of said defendant, and for such other and further relief in the premises as to your honors shall seem meet.

M. R. KEITH AND
F. J. WING,
Solicitors for Complainants.

4 UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

Personally appeared Harvey H. Brown, who, being duly sworn, says that he is the duly authorized agent of the complainant in the above bill of complaint, and further says that the allegations of said bill are true.

HARVEY H. BROWN.

Sworn to and subscribed in my presence by the said Harvey H. Brown on this 20th day of February, A. D. 1883.

A. J. RICKS, *Clerk, &c.*

[Endorsed] No. 4195. United States circuit court, northern district of Ohio, eastern division. Lake Superior Iron Co. *et al. vs.* Brown, Bonnell and Company. Bill in equity. Filed Feb. 20, 1883. M. R. Keith & F. J. Wing, solicitors for compl'ts.

5 And afterwards, to wit, on Tuesday, February 20th, 1883, an order was entered in said cause, which is in the words and figures following, to wit:

TUESDAY, *February 20th*, 1883.

THE LAKE SUPERIOR IRON CO. *et al.* *vs.* BROWN, BONNELL AND COMPANY. } Chancery, No. 4195.

This cause came on to be heard upon the bill filed herein, and the defendant, by its counsel, having entered its appearance and waived service of notice, and thereupon came on to be heard the complainants' motion for the appointment of a receiver of the defendant company, its property, and assets of every kind; and thereupon, upon consideration, it is ordered that Fayette Brown be, and he is hereby, appointed a receiver of the defendant company in this cause, and upon giving bond in the sum of one hundred thousand dollars for the faithful performance of his duties as such receiver, with surety approved by this court or the clerk thereof, he shall have power to enter upon and take possession of the money and assets, real and personal, and generally all the rights and property of said defendant, of whatsoever name and nature, belonging to it or in any way appertaining thereto, except such property as may be held or levied upon by attachment or levy, with power, however, to take possession of such last-described property as soon as such attachments or levy shall be removed by due process of law; and the said receiver shall take and hold all of the property of said defendant hereinbefore described, to use and dispose of the same under the orders of this court, and until otherwise ordered the said Fayette Brown as such receiver, in the name of said defendant company, according to the usual course of business thereof, to the
6 best advantage of all the parties or persons concerned, and generally to put and keep the said property in efficient and safe condition for use, subject to the further order of this court; and the corporate officers of said company, and whoever may have possession of the aforesaid property or any part thereof, including employees having the custody and charge of any of said property and effects, except such persons as may be in possession of said property by virtue of writs of attachment or execution, are hereby ordered to yield possession of such property to said receiver forthwith. Upon request of said receiver all books and papers, accounts,

and other evidences of debt shall also be delivered to said receiver or to such agents and employees as may be designated by him; and all of said property hereinbefore described without any actual delivery, immediately upon his giving bond and taking the oath required, shall be held and taken to be vested in his actual possession and subject to his order for all purposes needful in the prosecution of the business of operating the business of said defendant company and of all matters appertaining to his receivership, and said receiver is hereby authorized to retain and employ all such agents, servants, laborers, clerks, and assistants as in his discretion may be necessary to carry this order into effect with economy and prudence, and for said purposes he is hereby fully authorized and empowered to appropriate and apply the property and effects aforesaid so far as the same may be necessary, and as such receiver, in the corporate name of said company, he is hereby authorized to make and enter into all contracts for the obtaining of necessary supplies and for the prosecution of said business. Said receiver is required to keep or cause to be kept, in a regular and systematic manner, strict accounts of the business of said trust in his hands, and he is required
7 to file in the office of the clerk of this court, on or before the fourth Monday of each month, an abstract account of his receipts and disbursements for the preceding month, and said receiver is required to proceed without unnecessary delay after he enters upon the discharge of his duties to make a schedule of the property of the said defendant which may come into his possession and file the same with the clerk of this court, and said receiver shall apply for any further order or direction that he may deem necessary in the discharge of his duties under this appointment, and said receiver is ordered and required to continue the operation of the works and the business of said defendant in the mode and manner that it has heretofore been carried on by said company according to his discretion and judgment it is for the best interest of all creditors and other persons in interest. And now comes the said Fayette Brown, the receiver appointed by the court in this cause, and accepts said appointment, and gave bond, with Amasa Stone, Selah Chamberlain, and Charles A. Otis as surety therein, which bond and surety are approved and accepted by the court, and said bond is filed with the clerk of this court. Whereupon the said Fayette Brown was duly sworn as such receiver.

8 And afterwards, to wit, on March 28, 1883, a statement of property was filed in said cause, which is in the words and figures following, to wit:

Statement of Real and Personal Property of Brown, Bonnell & Co. Taken Possession of by Fayette Brown, Receiver, Feb'y 20, 1883, as per Schedule in Detail Herewith Presented.

Schedule			
A	Plant at Youngstown, consisting of two blast furnaces, mills, nail, link, and pin factories, 32⅛ acres of land, water works, tanks, machine shop, foundry, 3¼ miles steel-rail railroad, & 2½ miles narrow-gauge railroad, mill, furnace, & other equipment & tools complete—see schedule—valued by three experts at		1,160,410 00
B	Plant at Struthers, consisting of 1 blast furnace, 74½ x 16 ft., remodeled & rebuilt in 1881; capacity, ab't 80 to 120 tons per day—see Schedule B—cost in 1882 by purchase by B., B. & Co.		150,000 00
			1,310,410 00
C	Iron, nails, & other property attached by Republic Iron Co., afterwards turned over to receiver under agreement & by order of court; bar iron at 1.75 & nails, 2.75, rates	43,248 60	
D	Bar iron, nails, spikes, and other manuf'd and partly manufactured product, coal, pig iron, and other materials in and about the mills—Schedule D	99,576 50	
E	Bar iron, nails, spikes, &c., in warehouse; sheet iron at 2½c.; bars, 1.80; flat nails, 2.75; rates, Schedule E	6,453 35	
F	Iron, &c., shipped per acc't of J. V. Ayer's Sons, but stopped in transit and del'v'd by receiver direct to purchasers; invoice prices less 10%, Sched. F	17,739 37	
G	Iron, &c., loaded but not charged to Ayer's Sons; afterwards shipped direct to purchasers; invoice price less 10 %	17,604 50	
		$184,622 32	1,310,410 00
9	Amounts bro't forward	184,622 32	1,310,410 00
H	Iron, nails, &c., shipped to J. V. Ayer's Sons; afterwards stopped in transit and shipped back to Youngstown; invoice price less 10 %. See Schedule H	10,096 18	
I	Nails and links in Ayer's Sons' warehouse, at Chicago, turned over to agent for receiver and nails all sold; invoiced 5 % less than invoice. See Schedule I	13,319 74	
J	Pig iron, ore, coal, coke, and other materials and property at the Struthers, Falcon, & Phœnix blast furnaces. See Schedule J	35,300 44	
K	Supplies in storehouse. See Schedule K	6,907 95	
		250,246 63	
L	Rolling stock, consisting of 4 locomotives and 95 coal and coke cars; cost, as per ledger, $62,836.88. See Schedule L	44,250 00	
	Total of inventory		294,496 63

Statement of Real and Personal Property of Brown, Bonnell & Co., &c.—Continued.

	There is also shown on the books the following properties and interests:		
	Mahoning Coal Co.; capital stock, $140,000: ⅘ of the stock owned by B., B. & Co.; coal mines in Brookfield, O., under leases, mostly at 12½ cts. royalty, operated by B., B. & Co. and Himrod Furnace Co. Mines have been very productive and profitable; stands on ledger at cost of	275,000 00	
	Lawrence Ore Co., Limited, Wampum, Pa.: Iron-ore mine, operated jointly by B., B. & Co. and Himrod Furnace Co.; half interest in same owned by B., B. & Co.; stands on ledger at cost of	52,500 00	
	Amounts forward	327,500 00	1,605,906 63
10	Amounts bro't forward	327,500 00	1,604,906 63
	Mahoning Coke Co., Limited, Dunbar, Pa.: All the shares or interests owned by B., B. & Co.; property consists of about 11½ acres of land in fee and 185 acres of coal land at a royalty of 20c. per 100 bushels, 100 coke ovens, 1½ miles of railroad connecting with Penna. & Balto. & O. lines, dwellings, store, and equipment for mine and coke works complete; stands on ledger at cost of	80,000 00	
	Erskine & Co.: ⅓rds interest in a fire-brick manufactory on company's grounds, at Youngstown; most of the brick used by B., B. & Co.; stands on ledger at cost of	8,944 84	
	Lowell Limestone Co., near Lowell, O.: ⅝ths interest in a limestone quarry, from which works are partly supplied; stands on ledger at cost of	7,708 34	
	Excelsior Building Association: Stock in same; stands on ledger at cost of	399 61	
	Koplin self-feeder for nail machines: Patents and sole rights for the United States; stands on ledger at cost of	12,650 00	
	50 per cent. is probably a full valuation of these items	437,202 79	437,202 79
	There is also shown by the books to be cash due from banks, accounts, and bills receivable, supposed to be good, amounting to		83,600 24
	Total of property inventoried and of plant and other assets at nominal values		$2,125,709 66

FAYETTE BROWN,
Receiver of Brown, Bonnell & Co.

Filed March 28, 1888.
A. J. RICKS, *Clerk.*

11 And afterwards, to wit, on March 28, 1883, a supplemental bill was filed in said cause, which is in the words and figures following, to wit:

United States Circuit Court, Northern District of Ohio, Eastern Division.

LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL AND COMPANY.

To the honorable the judges of the circuit court of the United States in and for said district and division:

The said complainants, humbly complaining, as they have hereinbefore complained, in their own behalf and also in behalf of all other creditors of the defendant, secured or unsecured, file this their supplemental bill of complaint, and show unto your honors, as it was shown in part in the original bill filed herein, that the property of the defendant to which resort must be had by its creditors is of such a peculiar nature that great and irreparable loss, hindrance, and unjust preference between creditors would be experienced by your complainants and all other creditors in the collection of their several claims unless such property of the said defendant should be preserved in its entirety as a business by the receiver heretofore appointed by this court during the necessary time required to liquidate and adjust the affairs of said defendant company.

And your orators further show unto your honors that The Negaunee Concentrating Company, one of the original complainants named, had recovered a judgment against the said defendant prior to the filing of said original bill, and that such recovery of judgment gave to said Negaunee Concentrating Company a lien upon all
12 real estate of said defendant situate within the jurisdiction of this court, which lien still exists; and your orators further show that since the filing of the original bill herein execution has been issued upon said judgment in favor of the Negaunee Concentrating Company, and that the same has been returned unsatisfied; and your orators further show, upon information and belief, that other claims for liens and priorities of payment are made or threatened to be made by certain creditors of the defendant against its property, and also show that the creditors of said defendant, both secured and unsecured, are very numerous, and that there are many claims made against said defendant the justice of which is doubtful, and that many apparently just claims are unliquidated and not properly ascertained in their amounts; and your orators further show that there are stockholders of said defendant corporation, some of whom reside within the jurisdiction of this court and are citizens of the State of Ohio, to wit, A. W. Jones, Charles A. Otis, F. H. Mathews, Amasa Stone, W. H. Harris, Dan. P. Eells, Mrs. Eliza Witt, Howard P. Eells, John I. Williams, George M. Ayer, Mrs. Amy G. Ayer, H. I. Higgins, Maria Louisa Ayer, Mrs.

H. C. Ayer, A. M. Witherel, D. P. Eells, trustee; Mrs. Paige E. Newberry, Harriet L. Ayer, J. C. Knickerbocker, R. J. Wick, Levi Lake, H. C. Ayer, Mrs. L. A. Copeland, F. B. Williams, may be made parties to this suit by the proper issuance of subpœna from this court, and that a special master may be appointed by this court to ascertain the priorities of liens upon the property of said defendant and to adjust and determine the rights of claimants whose claims shall be disallowed by the receiver heretofore appointed, and that such master may be ordered to report his findings to this court, and that the receiver heretofore appointed be directed to send a copy of the decree herein granted in this behalf, if one
13 shall be granted, to every known creditor of said defendant or person who claims to be a creditor, and that he shall notify all such creditors or claimants, by due course of law after the entry of this decree, that if they wish to participate in the benefits of any decree of this court arising in this cause, or if they wish to have applied to the payment of their claims any portion of the fund arising from the sale of the property of said defendant, or any other order granted with respect to said property by this court, they shall present their claims, duly verified, to the receiver heretofore appointed herein for allowance on or before a day to be fixed by the court in its decree.

And your orators pray that at the final hearing of this cause your honors will order the receiver herein to sell all the property of the defendant company, and that such receiver shall hold the proceeds subject to the further order of the court, and that said receiver be directed to enforce the individual liability of the stockholders of said defendant corporation in behalf of all creditors of the same, if it shall appear that after the exhaustion of all assets there are any claims or parts of claims remaining unpaid, and for such other and further relief as to the court shall seem just and proper.

FRANCIS J. WING,
M. R. KEITH,
Solicitors for Complainants.

14 STATE OF OHIO, }
Cuyahoga County, } *ss:*

Personally appeared Harvey H. Brown, who, being duly sworn, says that he is the duly authorized agent of the Negaunee Concentrating Company, and that the allegations of the foregoing supplemental bill are true.

HARVEY H. BROWN.

Sworn to before me and subscribed in my presence this 28th day of March, A. D. 1883.

J. B. FAY,
[SEAL.] *Notary Public.*

15 And afterwards, to wit, on Monday, April 23rd, 1883, an order was made in this cause, which is in the words and figures following, to wit:

THE LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL AND COMPANY. } Chancery, 4195.

The court, being fully advised in the premises, orders and decrees that all creditors of the said defendant, Brown, Bonnell & Company, shall, on or before sixty days from the entry of this order, file their several claims in the clerk's office of this court by petition, in which shall be stated the amount and nature of such claims, and such petitions shall be duly verified by the oaths of the petitioners or their duly authorized agents; and it is further ordered that notice of the granting of this order be given to all creditors by publication, and the receiver is directed to send a copy of this order, by due course of mail, to each and every known creditor.

16 And afterwards, to wit, on June 14th, 1883, an order *pro confesso* was entered in said cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL AND COMPANY. } No. 4195.

In this cause, it appearing that the defendants have failed to plead, answer, or demur to the complainants' original or supplemental bills, it is ordered, on motion of complainants' solicitor, that said original and supplemental bills be taken as confessed by each and all of said defendants who have been served with process of subpœna therein, and that an order *pro confesso* be entered against them.

FRANCIS J. WING,
Solicitor for Complainants.

June 14th, 1883.

17 And afterwards an order was entered in said cause, which order is in the words and figures following, to wit:

TUESDAY, *July 17th*, 1883.

THE LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL AND COMPANY. } Chancery, No. 4195.

Upon the motion of the complainants herein, the merits thereof having been fully considered, it is ordered and decreed that Augustus J. Ricks be, and he is hereby, appointed a special master of this court, on account of his experience in matters of accounting, to hear and determine the rights of the several creditors of the defendant who, in accordance with a former order of this court herein made,

have filed their claims with the clerk thereof, and the said Augustus J. Ricks, as such master, is ordered to take an account from the pleadings now in this case and such other pleadings as may be filed with him as such master and from such proofs as may be produced before him, on giving the usual notice, and to ascertain what is justly due from said defendant to each and every creditor who has filed his claim in accordance with the said order of the court, and to adjudge and marshal the liens of said creditors and the priorities thereof, and to report his findings and determinations and adjudications to this court; and in performance of this order the said master shall have power to order the filing of proper pleadings before him and to compel the attendance of witnesses, and he is hereby vested with all powers conferred upon masters by the rules of the court, and is authorized to employ a stenographer to take testimony in all proper claims.

18 And afterwards, to wit, on November 24th, 1883, a plea was filed in said cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY, JACKSON IRON COMPANY, and NEGAUNEE CONCENTRATION COMPANY
vs.
BROWN, BONNELL AND COMPANY.

The defendant, Brown, Bonnell and Co., for plea to the whole of the bill of complaint and the supplemental bill of complaint (by protestation, not confessing or acknowledging the matters and things in and by said bill and supplemental bill to be true), saith—

That since the institution of this action, to wit, on this 24th day of November, 1883, there has been paid by this defendant into the hands of the clerk of this court the sum of five thousand three hundred and eighty-nine $\frac{92}{100}$ dollars ($5,389.92), being the entire amount of the principal and interest of the judgment obtained by the Negaunee Concentration Company on February 20th, 1883, in this court, and this defendant also, on the date last aforesaid, paid to the clerk of this court the sum of $68.94 in full for all the costs of said action, and the said judgment is now fully paid and satisfied; all which matters and things the defendant is ready to verify, and prays judgment whether it should be compelled to make any further answer to said original or supplemental bill, and that it be hence dismissed, &c.

19 BROWN, BONNELL AND COMPANY,
By HENRY CRAWFORD, *Solicitor.*

And the said defendant, for further plea to the said original and supplemental bill (by protestation, &c.), saith that the complainants in and by their said bill of complaint and supplemental bill have

stated facts showing that they have a plain, adequate, and complete remedy at law, and for such reason and on the face of the said pleadings this court has no jurisdiction whatever on the subject-matter of this action and no lawful power to enter any order or make any decree whatever therein; all which matters this defendant is ready to verify, and prays that this court will enter an order dismissing the cause for want of jurisdiction.

BROWN, BONNELL AND COMPANY,
By HENRY CRAWFORD, *Solicitor.*

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Henry Crawford on oath says he is the solicitor of the defendant, and that the matters set forth in the above two pleas are true and not interposed for delay.

HENRY CRAWFORD.

Subscribed and sworn to before me by said Henry Crawford on this 24th day of November, 1883.

A. J. RICKS, *Clerk.*

In my opinion the above pleas are well founded in point of law.

HENRY CRAWFORD.
A. W. JONES.

20 And afterwards, to wit, on the 1st of December, 1883, the following answers and cross-bill *was* filed in this cause, and which *is* in words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

The joint and several answers and cross-bill of Commercial National Bank; Charles A. Otis, William H. Harris, Dan. P. Eells, John Hay, and Samuel Mather, executors of estate of Amasa Stone, deceased, and Dan. P. Eells and John Hay, trustees, defendants, to the bill and supplemental bill of complaint of The Lake Superior Iron Company *et al.*, complainants.

And now come the Commercial National Bank, a national banking association duly incorporated and organized under and by virtue of the laws of the United States of America; Chas. A. Otis, William H. Harris, Dan. P. Eells, and John Hay and Samuel Mather, as executors of the estate of Amasa Stone, deceased, said Stone having died since the commencement of this suit, leaving a will, wherein he appointed said Hay and Mather executors thereof, which will was, on the — day of ——, duly admitted to probate in the probate court of Cuyahoga county, Ohio, and letters testamentary were, on the — day of ——, by said court duly issued thereon to the said Hay and Mather, who thereupon duly qualified and entered on the duties of heir said office; and also now come the said Dan. P. Eells, trustee,

and the said John Hay, trustee, and, by way of answer and cross-bill to the original bill and supplemental bill of the complainants filed in this cause, say—

That the defendant, Brown, Bonnell & Co., is indebted to them and each of them respectively, and that said indebtedness is
21 secured to them as hereinafter set forth.

Said Commercial National Bank, at the request of said Brown, Bonnell & Company, discounted eleven separate promissory notes made by John V. Ayer's Sons, of Chicago, Illinois, to the order of and endorsed by said Brown, Bonnell & Company.

One of said notes, dated Sept. 15th, 1882, for the sum of $5,583.14, payable at the Union National Bank on Feb. 20, 1883, and due Feb. 23, 1883.

Another of said notes, dated Dec. 30th, 1882, for the sum of $5,511.74, payable at the Union National Bank on May 19th, 1883, and due May 22, 1883.

Another of said notes, dated Dec. 30th, 1882, for the sum of $5,546.72, payable at the Union National Bank on May 21st, 1883, and due May 24th, 1883.

Another of said notes, dated Dec. 30, 1882, for the sum of $5,591.67, payable at the Union National Bank on May 22d, 1883, and due May 25th, 1883.

Another of said notes, dated December 30, 1882, for the sum of $5,636.19, payable at the Union National Bank on May 23, 1883, and due May 26th, 1883.

Another of said notes, dated Dec. 30, 1882, for the sum of $5,673.29, payable at the Union National Bank on May 25, 1883, and due May 28, 1883.

Another of said notes, dated Jan. 31, 1883, for the sum of $5,791.11, payable at the Union National Bank on June 17, 1883, and due June 20, 1883.

Another of said notes, dated Jan. 31, 1883, for the sum of $5,643.12, payable at the Union National Bank on June 18, 1883, and due June 21, 1883.

22 Another of said notes, dated Jan. 31, 1883, for the sum of $5,511.22, payable at the Union National Bank on June 19, 1883, and due June 22, 1883.

Another of said notes, dated Jan. 31, 1883, for the sum of $5,510.86, payable at the Union National Bank on June 20, 1883, and due June 23, 1883.

Another of said notes, dated Jan. 31, 1883, for the sum of $4,880.38, payable at the Union National Bank on June 22, 1883, and due June 25, 1883.

That said notes were duly presented for payment at the times and at the places where they were respectively made payable, of all of which said Brown, Bonnell & Co. had due notice, the aggregate face value of said notes being $60,879.44, and they also paid fees for the protest of one of said notes due February 23, 1883, amounting to $2.30, making a total of $60,881.74, less an amount paid by said last-named company on one of said notes due Feb. 23, 1883, of the sum of $778.80, leaving a balance of $60,102.94, no part of which

has been paid by John V. Ayer's Sons nor by said Brown, Bonnell & Company, and the same is still due to said Commercial National Bank, with interest on each of the sums for which said notes were given from the time they respectively became due. Copies of said notes, with all endorsements thereon, are hereto attached, marked respectively Exhibits A, B, C, D, E, F, G, H, I, J, and K, and reference made thereto; that said Dan. P. Eells, at the request of said defendant, Brown, Bonnell and Company, endorsed for the accommodation of said company five certain promissory notes described as follows: One of said notes, dated October 19, 1882, for the sum of $83,333.33, payable at Commercial National Bank, Cleve-
23 land, O., on March 21, 1883, and due March 24th, 1883.

Another of said notes, dated November 18, 1882, for the sum of $8,333.33, payable at the Commercial National Bank, Cleveland, Ohio, four months after date, and due March 21, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250, payable at Commercial National Bank, Cleveland, Ohio, on April 18, 1883, and due April 21, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250, payable at Commercial National Bank, Cleveland, Ohio, on May 22, 1883, and due May 25, 1883.

Another of said notes, dated Dec. 24, 1882, for the sum of $8,333, payable a Commercial National Bank, Cleveland, Ohio, on Apr. 23, 1883, and due April 26, 1883.

All of which notes were executed by Brown, Bonnell and Company to the order of said Dan. P. Eells and endorsed by him for the accommodation of said company as aforesaid, and which said notes said Brown, Bonnell and Company negotiated by getting the same discounted, and thereby received the face value thereof, less discount. Said notes were duly presented for payment at the times when and the places where they were respectively made payable, of all which said Brown, Bonnell and Company had due notice, but said company failed to pay said notes or any one of them when they respectively became due and payable as aforesaid, and said Eells has been compelled to pay and has paid to the holders of said promissory notes the sums so due by the terms of each respectively, amounting in the aggregate to the sum of $37,499.66, of all which said Brown, Bonnell and Company had due notice.

24 No part of which said sum has been paid by said Brown, Bonnell and Company, and the same is still due to said Eells, with interest on each of the sums for which said notes were given from the time when they respectively became due. Copies of which notes, with all endorsements thereon, are hereto attached, marked Exhibits L, M, N, O, and P respectively, and reference made thereto.

That said Charles A. Otis, at the request of said Brown, Bonnell and Company, endorsed for the accommodation of said company eight certain promissory notes executed by said Brown, Bonnell and Company to the order of said Charles A. Otis and by him endorsed as aforesaid. Said notes are described as follows:

One of said notes, dated Dec. 4, 1882, for the sum of $5,000.00,

payable at Commercial National Bank, Cleveland, Ohio, on Apr. 16, 1883, and due Apr. 19th, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum of $5,000, payable at Commercial National Bank, Cleveland, Ohio, on Apr. 17th, 1883, and due April 20, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum of $5,000.00, payable at Commercial National Bank, Cleveland, O., on April 18, 1883, and due April 21, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum of $10,000.00, payable at Commercial National Bank, Cleveland, O., on Apr. 20th, 1883, and due April 23rd, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum — $5,000.00, payable at Commercial National Bank, Cleveland, Ohio, on May 15, 1883, and due May 18th, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum — $5,000.00, payable at Commercial Bank, Cleveland, Ohio, on May 16th,
25 1883, and due May 19th, 1883.

Another of said notes, dated Dec. 4, 1883, for the sum of $5,000 00, payable at Commercial National Bank, Cleveland, Ohio, on May 18, 1883, and due May 21st, 1883.

Another of said notes, dated Dec. 4, 1883, for the sum of $10,000.00, payable at Commercial National Bank, Cleveland, O., on May 19, 1883, and due May 22nd, 1883.

All of which said notes said Brown, Bonnell and Company negotiated by getting the same discounted, and thereby received the face value thereof, less discount. The aggregate face value of said notes amounted to the sum of $50,000.00. Said notes were duly presented for payment at the time when and the places where they were respectively made payable of all which said Brown, Bonnell & Company had due notice, but said company failed to pay said notes or any one of them when they respectively, became due and payable as aforesaid, and said Charles A. Otis has been compelled to pay and has paid to the holders of said promissory notes the sums so due by the terms of each respectively amounting in the aggregate to the sum of $50,000, of all which said Brown, Bonnell and Company had due notice, no part of which said sum of $50,000.00 has been paid by said Brown, Bonnell and Company, and the same is still due to said Otis, with interest on each of the sums for which said notes were given from the time when they respectively became due. Copies of which notes, with all endorsements thereon, are hereto attached, marked Exhibits Q, R, S, T, U, V, W, and X respectively, and reference made thereto.

That said William H. Harris endorsed, at the request of Brown, Bonnell and Company, for the accommodation of said com-
26 pany certain promissory notes executed by said Brown, Bonnell and Company to the order of said William H. Harris and by him endorsed for the accommodation of said company as aforesaid. Said notes are described as follows:

One of said notes, dated Oct. 19, 1882, for the sum of $8,333.34, payable at Commercial National Bank, Cleveland, Ohio, on March 23, 1883, and due March 26th, 1883.

Another of said notes, dated Nov. 18, 1882, for the sum of $8,333.34, payable at Commercial National Bank, Cleveland, Ohio, four months after date, and due March 21, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum of $8,333.00, payable at Commercial National Bank, Cleveland, O., on April 24th, 1883, and due April 27th, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250, payable at Commercial National Bank, Cleveland, Ohio, on April 24th, 1883, and due April 27, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250.00, payable at Commercial National Bank, Cleveland, O., May 23, 1883, and due May 26th, 1883.

All of which said notes said Brown, Bonnell and Company negotiated by getting the same discounted, and thereby received the face value thereof, less discount. The aggregate face value of said notes amounted to the sum of $37,499.68.

Said notes were duly presented for payment at the times when and the places where they were respectively made payable, of all which said Brown, Bonnell and company had due notice, but said company failed to pay said notes or any one of them, when they respectively became due and payable as aforesaid,

27 and said William H. Harris has been compelled to pay and has paid to the holders of said promissory notes the several sums so due by the terms of each respectively, amounting in the aggregate to the sum of $37,499.68, of all which said Brown, Bonnell and Company had due notice, no part of which said sum of $37,499.68 has been paid by said Brown, Bonnell and Company, and the same is still due to said Harris, with interest on each of the sums for which said notes were given from the time when they respectively became due. Copies of which notes, with all endorsements thereon, are hereto attached, marked Exhibits 1, 2, 3, 4, and 5 respectively, and reference made thereto.

That said Amasa Stone during his lifetime, at the request of said Brown, Bonnell and Company, for the accommodation of said company, endorsed five certain promissory notes executed by said Brown, Bonnell and Company to the order of said Amasa Stone and by him endorsed for the accommodation of said company as aforesaid. Said notes are described as follows:

One of said notes, dated Nov. 18, 1882, for the sum of $8,333.33, payable at Commercial National Bank, Cleveland, Ohio, four months after date, and due March 21, 1883.

Another of said notes, dated Dec. 4, 1882, for the sum of $8,333.00, payable at Commercial National Bank, Cleveland, Ohio, on April 21, 1883, and due April 24th, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250.00, payable at Commercial National Bank, Cleveland, O., on April 17, 1883, and due April 20th, 1883.

Another of said notes, dated Dec. 18, 1882, for the sum of $6,250.00, payable at Commercial National Bank, Cleveland, Ohio, on May 16, 1883, and due May 19th, 1883.

28 Another of said notes, dated Oct. 19, 1882, for the sum of $8,333.33, payable at Commercial National Bank, Cleveland, Ohio, on March 19, 1883, and due March 22nd, 1883.

All of which said notes said Brown, Bonnell and Company negotiated by getting the same discounted, and thereby received the face value thereof, less discount. The aggregate face value of said notes amounted to the sum of $37,499.66.

Said notes were duly presented for payment at the times when and the places where they were respectively made payable, of all which said Brown, Bonnell and Company had due notice, but said company failed to pay said notes or any one of them when they respectively became due and were presented for payment as aforesaid, and said Amasa Stone was compelled to pay and did pay to the holders of said promissory notes the said several sums so due by the terms — each respectively, amounting in the aggregate to the sum of $37,499.66, of all which said Brown, Bonnell and Company had due notice, and no part of said sum of $37,499.66 has been paid by said Brown, Bonnell and Company, and the same is still due to the estate of said Amasa Stone, deceased, with interest on each of the sums for which said notes were given from the time when they respectively became due.

Copies of which notes, with all endorsements thereon, are hereto attached, marked Exhibits 6, 7, 8, 9, and 10 respectively, and reference made thereto.

And to secure the payment of the aforesaid notes so discounted and endorsed by the respective parties above named said Brown, Bonnell and Company delivered to each of said parties certain mort-

29 gage bonds hereinafter particularly specified as collateral security or pledge to secure the payment of said promissory notes and to save the endorsers harmless from the payment thereof and from all liability on acconnt of their said respective endorsements, said bonds having been executed and delivered to Dan. P. Eells and John Hay as trustees or bearer of said Brown, Bonnell and Company, and were for the sum of five thousand dollars each and interest thereon at the rate of six per cent. per annum, payable semi-annually, coupons or interest warrants being attached to said bonds representing said interest.

Said bonds so pledged being a part of a series of one hundred bonds, numbered consecutively from one to No. 100, inclusive, all of like date (being dated April 3rd, A. D. 1882) and amount and of the same tenor, except as to the time of their maturity, of which series six bonds, numbered consecutively from No. 1 to No. 6, inclusive, are payable on the 3rd day of April, 1884; seven bonds, numbered consecutively from No. 7 to 13, inclusive, are payable on the third day of April, 1885; eight bonds, numbered consecutively from No. 14 to 21, inclusive, are payable on the 3rd day of April, 1886; nine bonds, numbered consecutively from No. 22 to 30, inclusive, are payable on the 3rd day of April, 1887; ten bonds, numbered consecutively from No. 31 to 41, inclusive, are payable on the 3rd day of Apr., 1888; twelve bonds, numbered consecutively from No. 42 to 53, inclusive, are payable on the 3rd day of April, 1889;

fourteen bonds, numbered consecutively from No. 53 to 66, inclusive, are payable on the 3rd day of April, 1890; sixteen bonds, numbered consecutively from No. 67 to 82, inclusive, are payable on the 3rd day of April, 1891, and eighteen bonds, numbered consecutively from No. 83 to No. 100, inclusive, are payable on the 3rd day
30 of April, 1892, and the payment of the principal and interest of all of said bonds is secured by mortgage or deed of trust in the nature of a mortgage, bearing even date with said bonds, made by said Brown, Bonnell and Company to said Dan. P. Eells and John Hay, trustees, conveying to them in trust for the security of the successive holders of all or any of said bonds on the real estate of said corporation situated in the city of Youngstown, county of Mahoning and State of Ohio, consisting of about forty-five acres of land, with the two blast furnaces, six iron rolling mills, and other buildings, improvements, fixed machinery, and other fixtures thereon, and of all the interest of said Brown, Bonnell and Company in what is known as the Struthers blast-furnace property, comprising about thirty-two acres, in the township of Poland, in said county, and is further secured by a pledge in writing to said Dan. P. Eells and John Hay, trustees, upon the trust aforesaid of seven hundred and ninety-three shares, of no market value as far as is known, to defendants of the Mahoning Coal Company, a mining corporation of said State of Ohio, to copies of which mortgage and pledge hereto attached, marked Exhibits 11 and 12 respectively, and said mortgage copies made a part of this pleading, reference is hereby made for a particular description of the premises and property so included therein to secure the payment of said bonds.

The conveyance of said property being absolute, except upon the performance of all the conditions in said mortgage contained, among which conditions was one that said Brown, Bonnell and Company should pay according to the tenor thereof each and every
31 one of said bonds, with all the interest thereon as it became due.

And the aforesaid answering defendants aver that said condition has not been complied with, a large amount of interest having become due upon said bonds has not been paid according to the tenor thereof, and the coupons thereto attached, amounting in all upon the bonds so held by these answering defendants to the sum of thirty-one thousand five hundred dollars, with interest from the time said coupons became due, amounting to $——.

And said answering defendants aver that said bonds so held by them have been certified as required by the terms of said mortgage, and all of the conditions required to be performed by said trustees have in all respects been performed, while said Brown, Bonnell and Company have failed to perform the condition hereinbefore specified, as well as other conditions of said mortgage on its part to be performed, and said deed has become absolute. Said mortgage was duly received for record by the recorder of said county of Mahoning, at this office, on the 17th day of Feb., 1883, at 2.35 o'clock p. m., and duly recorded Feb. 19, 1883, in Mahoning county, Ohio, Rec-

ords of Mortgages, in volume 21, at page 265, and became and is a first lien on the property therein described.

Said Commercial National Bank holds thirty of the aforesaid bonds, numbered from 71 to 100, both inclusive.

Said Dan. P. Eells holds sixteen of the aforesaid bonds, numbered from 1 to 16, both inclusive.

Said Charles A. Otis holds sixteen of the aforesaid bonds, numbered from 33 to 44, both inclusive, and 61 to 64, inclusive.

Said William H. Harris holds sixteen of the aforesaid bonds, numbered from 17 to 32, both inclusive.

32 Said executors of the estate of Amasa Stone, deceased, hold sixteen of the aforesaid bonds, numbered from 45 to 60, both inclusive.

And said answering defendants further aver that the conditions upon which said bonds were pledged to them respectively have been broken, and said bonds or the proceeds thereof belong to said answering defendants, and they are entitled to the amount of interest now due and unpaid upon said bonds as applicable upon the claims so held against said Brown, Bonnell and Company, as hereinbefore specified; and said defendants Eells and Hay, trustees, aver that the facts hereinbefore set forth in this pleading are in all respects true, and they reassert the same; and said answering defendants, together with said defendants Eells and Hay, trustees, and all of said answering defendants, pray that in default of payment of the amount of interest now due or the amount of principal and interest that may become due before a final decree shall be taken herein that said mortgage may be foreclosed and said premises sold free of all claims of said Brown, Bonnell and Company, and the proceeds thereof applied to the payment of the amounts so found due these answering defendants as they may be respectively entitled thereto.

And said answering defendants admit that except as hereinbefore stated the averments and allegations set forth in the original and supplemental bills are true, and they reassert the same in their own behalf, and they aver that since the commencement of this suit, as they are informed and believe and aver the facts so to be, that the president of said Brown, Bonnell and Company, Herbert C. Ayer, who has become insolvent and was insolvent prior to October 20th, 1883, and had not in any way acted for said company since

33 his insolvency became known, which was some time in Feb. of said year, did, on the 20th day of Oct., 1883, by an instrument of writing of that date, to which he signed the name of Brown, Bonnell and Company, by himself as president, appoint Henry Crawford, of Chicago, Illinois, general counsel of said Brown, Bonnell and Company, thereby authorizing and directing him to take full and exclusive charge of all litigation against or in favor of said corporation and to fully represent and appear for it in all legal proceedings and take care of its interest in all negotiations for arrangements or composition with its creditors or for reorganization, as will appear by a copy of said instrument of writing, which is attached hereto and marked "Exhibit B," and to which reference is hereby made; all of which was done without any authority whatever from

the board of directors or stockholders of said corporation and without their knowledge or consent and for the purpose of giving preference to certain creditors of said corporation and to damage the rights and interests of others, and that said property might be taken from the hands of the receiver appointed by this court, whereby it might be endangered, wasted, and thereby the securities of these answering defendants greatly lessened.

And pursuant to said fraudulent design in giving preference to certain of said creditors the said Henry Crawford, so representing said Brown, Bonnell and Company, without the authority of its stockholders and board of directors, did, on or about the 23d day of November, A. D. 1883, appear before the court of common pleas of Mahoning county, in said State of O., and by his confession
34 thirty-three judgments were entered against said corporation, amounting in the aggregate to the sum of five hundred and seventy thousand eight hundred and six dollars and sixty-nine cents, which judgments were so entered without the authority of said company, as hereinbefore stated. Wherefore these answering defendants, together with said Eells and Hay, trustees, also pray, for the reasons set forth in the original and supplemental bill and on account of the facts hereinbefore stated occurring since the filing thereof, that the receiver heretofore appointed by this court in this cause may be retained until the rights of all the parties therein shall be determined and the final decree shall — entered herein, and for such other and further relief as these answering defendants may be entitled to and as equity and good conscience may require.

JOEL W. TYLER &
A. ST. J. NEWBURRY,
Solicitors for Defendants.

THE STATE OF OHIO, } *ss:*
Cuyahoga County, }

Dan. P. Eells, being first duly sworn, on oath says that he is one of the defendants named in the foregoing answer and cross-bill; that he has read the same and is acquainted with the contents, and that the facts stated and the allegations contained therein are true, as he verily believes.

DAN. P. EELLS.

Subscribed in my presence and sworn to before me this 1st day of December, A. D. 1883.

[SEAL.] G. W. SHUMWAY,
Notary Public.

35 Copy.

$5,583.14. CHICAGO, *Sept.* 15, 1882.

On February 20, 1883, after date, we promise to pay to the order of Brown, Bonnell & Company fifty-five hundred and eighty-three .14 dollars, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

"Exhibit A."

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell & Company, by F. H. Mathews, treas. Paid by Brown, Bonnell and Company on this note $778.80 Feb. 23, 1883. Protested for non-payment at Chicago, Ill., Feb. 23, 1883, by John B. Meyer, notary public. Certificate of protest attached to original note. Fees paid, $2.30.

Copy.

$5,511.74. CHICAGO, *Dec. 30th*, 1882.

On May 19th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-five hundred eleven .74 dollars, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JOHN V. AYER & SONS.

"Exhibit B."

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$5,546.72. CHICAGO, *Dec. 30th*, 1882.

On May 21st, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-five hundred forty-six .72 dollars, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

Exhibit C.

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$5,591.67. CHICAGO, *Dec. 30th*, 1882.

On May 22nd, 1883, after date, we promise to pay to the
36 order of Brown, Bonnell & Co. fifty-five hundred ninety-one .67 dollars, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JOHN V. AYER & SONS.

Exhibit D.

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell & Company, by F. H. Mathews, treas.

Copy.

$5,636.19. CHICAGO, *December* 30, 1882.

On May 23, 1883, after date, we promise to pay to the order of Brown, Bonnell and Company fifty-six hundred thirty-six .19 dollars, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JOHN V. AYER & SONS.

Exhibit E.

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell and Company, by F. H. Mathews, treas.

Copy.

$5,673.29. CHICAGO, *Dec.* 30, 1882.

On May 25th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-six hundred and seventy-three dollars twenty-nine cents, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER'S SONS.

" Exhibit F."

Endorsed: Pay Jas. Colwell, cashier, or order. Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$5,791.11. CHICAGO, *Jan.* 31*st*, 1883.

On June 17th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-seven hundred ninety-one dollars and eleven cents, at the Union National Bank, value received.

No. —. Due ——.

(Signed) J. V. AYER & SONS.

Exhibit G.

Endorsed: (Signed) Brown, Bonnell and Company, by F. H. Mathews, treas.

Copy.

$5,643.12. CHICAGO *Jan.* 31*st*, 1883.

37 On June 18th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-six hundred forty-three dollars and twelve cents, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

" Exhibit H."

Endorsed: (Signed) Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$5,511.22. CHICAGO, *Jan* 31*st*, 1883.

On June 19th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Company fifty-five hundred eleven dollars and twenty-two cents, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

" Exhibit I."

Endorsed: (Signed) Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$5,510.86. CHICAGO, *Jan.* 31*st*, 1883.

On June 20th, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. fifty-five hundred ten dollars and eighty-six cents, at the Union National Bank, value rec'd.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

"Exhibit J."

Endorsed: (Signed) Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$4,880.38. CHICAGO, *Jan:* 31, 1883.

On June 22nd, 1883, after date, we promise to pay to the order of Brown, Bonnell & Co. forty-eight hundred eighty dollars and thirty-eight cents, at the Union National Bank, value received.

No. —. Due ——.

(Signed) JNO. V. AYER & SONS.

"Exhibit K."

Endorsed: (Signed) Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$8,333.33. YOUNGSTOWN, O., *Oct.* 19*th*, 1882.

On March 21st, 1883, after date, we promise to pay to the order of Dan. P. Eells eighty-three hundred thirty-three $\frac{33}{100}$ dols., 38 at the Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

(Signed) BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Treas.*

"Exhibit L."

Endorsed: Dan. P. Eells. Brown, Bonnell & Company, by F. H. Mathews, treas.

Copy.

$8,333.33. CLEVELAND, OHIO, *November* 18, 1883.

Four months after date we promise to pay to the order of Dan. P. Eells eighty-three hundred thirty-three dollars and thirty-three cents, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

(Signed) BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Treas.*

"Exhibit M."

Endorsed: Dan. P. Eells, per H. P. Eells. Brown, Bonnell & Co., by F. H. Mathews, treas.

Copy.

$6,250.00. YOUNGSTOWN, *December* 18*th*, 1882.

April 18th, after date, we promise to pay to the order of Dan. P. Eells sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

(Signed) BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit N."

Endorsed: Dan. P. Eells, p'r H. P. Eells. Brown, Bonnell & Company, by F. H. Mathews, tr.

Copy.

$6,250.00. YOUNGSTOWN, *Dec.* 18*th*, 1882.

May 22d, after date, we promise to pay to the order of Dan. P. Eells sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

(Signed) BROWN, BONNELL & COMPANY,
By F. H. MATHEWS, *Tr.*

"Exhibit O."

Endorsed: Dan. P. Eells, p'r H. P. Eells. Pay Am. Exchange National Bank or order. Brown, Bonnell & Co., by F. H. Mathews, tr.

39 Copy.

$8,333.00. YOUNGSTOWN, *Dec.* 24*th*, 1883.

On April 23d, 1883, after date, we promise to pay to the order of Dan. P. Eells eighty-three hundred and thirty-three dollars, at Commercial Nat. Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit P."

Endorsed: Dan. P. Eells. Brown, Bonnell & Co., by H. C. Ayer, p't

Copy.

$5,000.00. YOUNGSTOWN, O., *Dec.* 4, 1882.

On April 16th, 1883, after date, we promise to pay to the order of Chas. A. Otis five thousand dollars, at Com'l Nat'l B'k, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit Q."

Endorsed: Copy. Chas. A. Otis. Brown, Bonnell & Co., by H. C. Ayer, p't. Pay G. A. Garretson, As. C., or order for collection only on account of Am. Exchange Nat'l Bank. G. Burns, A. Ch. National Bank of Commerce. Paid April 19, 1883. Cleveland, Ohio.

Copy.

$5,000.00. YOUNGSTOWN, OHIO, *Dec. 4th*, 1882.

On April 17th, 1883, after date, we promise to pay to the order of Chas. A. Otis five thousand dollars, at Com'l Nat'l Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit R."

[Endorsed:] Chas. A. Otis. Brown, Bonnell & Co., by H. C. Ayer, p't. Pay G. A. Garretson or order for collection only on account of Am. Exchange National Bank. E. Burns, A. C.

$5,000.00. YOUNGSTOWN, OHIO, *December 4th*, 1882.

On April 18th, 1883, after date, we promise to pay to the order of Chas. A. Otis five thousand dollars, at Com'l Nat'l Bank, Cleveland, Ohio, value received.

40 No. —. Due ——.

BROWN, BONNELL & COMPANY,
By F. H. MATHEWS, *Tr.*

"Exhibit S."

Endorsed: Copy. Chas. A. Otis. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account of the Importers' & Traders' National Bank of New York. National City Bank. Paid. Cleveland, O.

$10,000.00 YOUNGSTOWN, OHIO, *Dec.* 4, 1882.

On April 20th, 1883, after date, we promise to pay to the order of Chas. A. Otis ten thousand dollars, at Com'l Nat'l Bank, Cleveland, Ohio, valued received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit T."

Endorsed: Copy. Chas. A. Otis. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account of the Importers' & Traders' National Bank of New York. National City Bank, Cleveland, Ohio. Paid.

$5,000.00. YOUNGSTOWN, OHIO, *Dec. 4th*, 1882.

On May 15th, 1883, after date, we promise to pay to the order of

Chas. A. Otis five thousand dollars, at Com'l Nat'l B'k, Cleveland, Ohio, value received.
No —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit U."

Endorsed: Copy. Chas. A. Otis. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account of the Importers' & Traders' National Bank of New York. National City Bank, Cleveland, Ohio. Paid.

$5,000.00. YOUNGSTOWN, O., *Dec. 4th*, 1882.

41 On May 16th, 1883, after date, we promise to pay to the order of Chas. A. Otis five thousand dollars, at Commercial National Bank, Cleveland, Ohio, value received.
No. —. Due ——.

BROWN, BONNELL & CO.
F. H. MATHEWS, *Tr.*

"Exhibit V."

Endorsed: Copy. Chas. A. Oties. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account of the Importers' & Traders' National Bank of New York. Paid. National City Bank, Cleveland, Ohio.

$5,000.00. YOUNGSTOWN, O., *Dec. 4th*, 1882.

On May 18, 1883, after date, we promise to pay to the order of Chas. A. Otis five thousand dollars, at Commercial National Bank, Cleveland, Ohio, value received.
No.—. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit W."

Endorsed: Copy. Chas. A. Otis. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account of the Importers' & Traders' National Bank of New York. Paid. National City Bank, Cleveland, Ohio.

$10,000.00. YOUNGSTOWN, OHIO, *Dec. 4th*, 1882.

On May 19th, 1883, after date, we promise to pay to the order of Chas. A. Otis ten thousand dollars, at Commercial National Bank, Cleveland, Ohio, value received.
No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit X."

Endorsed: Copy. Chas. A. Otis. Pay Edward Townsend, cashier, or order. Jno. V. Ayer, pres. Pay J. F. Whitelaw, Esq., cashier, or order for collection for account the Importers' & Traders' National Bank of New York. Nat'l C. B'k. Paid. Cleve., O.

42 $8,333.34. YOUNGSTOWN, O., *Oct.* 19*th*, 1882.

On March 23rd, 1883, after date, we promise to pay to the order of W. H. Harris eighty-three hundred thirty-three dollars and thirty-four cents, at Commercial National Bank, Cleveland, O., value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

Copy. "Exhibit 1."

Endorsed: W. H. Harris.

$8,333.34. CLEVELAND, OHIO, *Nov.* 18, 1882.

Four months after date we promise to pay to the order of W. H. Harris eighty-three hundred thirty-three dollars and thirty-four cents, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & COMPANY,
By F. H. MATHEWS, *Tr.*

Copy. "Exhibit 2."

Endorsed: W. H. Harris. Brown, Bonnell & Co., by F. H. Mathews, tr. Pay Commercial National Bank, Cleveland, Ohio, or order for collection on account of Wick Brothers & Co., Youngstown, Ohio.

$8,333.00. YOUNGSTOWN, OHIO, *Dec.* 4, 1882.

On April 24th, 1883, after date, we promise to pay to the order of W. H. Harris eighty-three hundred and thirty-three dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

Copy. "Exhibit 3."

Endorsed: W. H. Harris. Brown, Bonnell & Co., by H. C. Ayer, p't. Pay Geo. A. Garretson or order for collection only on account of Am. Exch'g. National Bank. E. Burns, A. cash'r. National Bank of Commerce. Paid April 27th, 1883.

43 $6,250.00. YOUNGSTOWN, OHIO, *Dec.* 18*th*, 1882.

April 24th, after date, we promise to pay to the order of W.

H. Harris sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, O., value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 4." Copy.

Endorsed: W. H. Harris. Pay Am. Exchange Nat. B'k or order. Brown, Bonnell & Co., by F. H. Mathews, tr. Pay G. A. Garretson or order for collection only on account of Am. Exchange Nat'l Bank. E. Burns, A. cash'r. National Bank of Commerce. Paid April 27th, 1883.

$6,250.00. YOUNGSTOWN, O., *Dec.* 18, 1882.

May 23rd, after date, we promise to pay to the order of W. H. Harris sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, O., value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 5." Copy.

Endorsed: W. H. Harris. Pay Am. Exch'ge National Bank or order. Brown, Bonnell & Co., by F. H. Mathews, tr. Pay G. A. Garretson or order for collection only on account of Am. Exchange National Bank. D. Park, cash'r. National B'k of Commerce. Paid May 23rd, 1883.

$8,333.33. YOUNGSTOWN, O., *Nov.* 18, 1882.

Four months after date we promise to pay to the order of Amasa Stone eighty-three hundred thirty-three dollars and thirty-three cents, at Commercial National Bank, Cleveland, O., value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 6."

Endorsed: Amasa Stone. Pay Am. Ex. Nat. Bank or order. Brown, Bonnell and Company, by F. H. Mathews, tr.

44 $8,333.00. YOUNGSTOWN, O., *Dec.* 4, 1882.

On April 21st, 1883, after date, we promise to pay to the order of Amasa Stone eighty-three hundred and thirty-three dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 7."

Endorsed: A. Stone. Brown, Bonnell & Co., by H. C. Ayer, p't.

$6,250.00. YOUNGSTOWN, O., *Dec.* 18*th*, 1882.

April 17th, after date, we promise to pay to the order of Amasa Stone sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 8."

Endorsed: A. Stone. Pay Am. Ex. National Bank or order. Brown, Bonnell & Company, by F. H. Mathews, tr.

$6,250.00. YOUNGSTOWN, O., *Dec.* 18*th*, 1882.

May 16th, after date, we promise to pay to the order of Amasa Stone sixty-two hundred and fifty dollars, at Commercial National Bank, Cleveland, Ohio, value received.

No. —. Due. ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 9."

Endorsed: A. Stone. Pay Am. Ex. Nat. Bank or order. Brown, Bonnell & Co., by F. H. Mathews, tr.

$8,333.33. YOUNGSTOWN, O., *Oct.* 19*th*, 1882.

On March 19th, 1883, after date, we promise to pay to the order of Amasa Stone eighty-three hundred thirty-three dollars and thirty-three cents, at Commercial National Bank, Cleveland, O., value received.

No. —. Due ——.

BROWN, BONNELL & CO.,
By F. H. MATHEWS, *Tr.*

"Exhibit 10."

45 Endorsed: Pay to the order of N. T. Sanford, ag't Amasa Stone. Mahoning Coke Co., Limited, by N. T. Sanford, ag't.

NEW YORK, *Oct.* 20*th*, 1883.

Henry Crawford, of Chicago, Ill., is hereby appointed general counsel of Brown, Bonnell & Company, and as such is authorized and directed to take full and exclusive charge of all litigation against or in favor of said corporation and to fully represent and appear for it in all legal proceedings and take care of its interests in all negotiations for arrangements or composition with its creditors or for reorganization.

BROWN, BONNELL & COMPANY,
By H. C. AYER, *President.*

"Exhibit Z."

"EXHIBIT 11."

This indenture, made this third day of April, A. D. one thousand eight hundred and eighty-two, by and between Brown, Bonnell & Co., a corporation organized and existing under the laws of the State of Ohio, party of the first part, and Dan. P. Eells and John Hay, of the city of Cleveland, Ohio, parties of the second part, witnesseth:

That whereas the party of the first part, being thereto empowered by law, has by due action taken resolved to borrow money in the aggregate five hundred thousand dollars and to issue therefor its bonds bearing even date herewith, one hundred in number, in the denomination of five thousand dollars each, all of like tenor except as to the time of their maturity, of which bonds six are payable in two years, seven in three years, eight in four years, nine in five years, ten in six years, twelve in seven years, fourteen in
46 eight years, sixteen in nine years, and eighteen in ten years from the dates hereof, the bonds to be duly executed under the seal of the party of the first part by the president and treasurer thereof, and the interest coupons to be authenticated by the lithographed fac simile of the signature of said treasurer, and the bonds also to bear the certificate of the parties of the second part, each of which bonds with the coupons attached shall, except as to the time of maturity, be of the tenor and effect following—that is to say:

UNITED STATES OF AMERICA, *State of Ohio.*

$5,000.00.

Brown, Bonnell and Company, a corporation organized and existing under the laws of Ohio, acknowledges itself indebted unto Dan. P. Eells and John Hay or bearer in the sum of five thousand dollars, and promises to pay the same on the third day of April, A. D. one thousand eight hundred and — (18—), at the Commercial National Bank, in the city of Cleveland, Ohio, and to pay interest thereon from and after the third day of April, 1882, at the rate of six per centum per annum, semi-annually, on the third days of October and April in each year, at said bank, upon presentation and surrender of the interest warrants hereto attached as they respectively become payable. This bond is one of a series of one hundred bonds, numbered consecutively from number one to number one hundred, inclusive, all of like date and amount and of the same tenor except as to the time of their maturity, of which series six bonds, numbered consecutively from number one to number six, inclusive, are payable on the 3rd day of April, 1884; seven bonds, numbered consecutively from number seven to number thirteen, inclusive, are payable on the 3rd day of April,
47 1885; eight bonds, numbered consecutively from number fourteen to number twenty-one, inclusive, are payable on the 3rd day of April, 1886; nine bonds, numbered consecutively from number twenty-two to number thirty, inclusive, are payable on the 3rd day

of April, 1887; ten bonds, numbered consecutively from number thirty-one to number *fifty*, inclusive, are payable on the 3rd day of April, 1888; twelve bonds, numbered consecutively from *fifty*-one to number fifty-two, inclusive, are payable on the 3rd day of April, 1889; fourteen bonds, numbered consecutively from number fifty-three to number sixty-six, inclusive, are payable on the 3rd day of April, 1890; sixteen bonds, numbered consecutively from number sixty-seven to number eighty-two, inclusive, are payable on the 3rd day of April, 1891, and eighteen bonds, numbered consecutively from number eighty-three to number one hundred, inclusive, are payable on the 3rd day of April, 1892. The payment of the principal and interest of all of said bonds is secured by a deed in the nature of a mortgage, bearing even date herewith, made by said corporation to said Dan. P. Eells and John Hay, trustees, conveying to them in trust for the security of the successive holders of all of said bonds all the real estate of said corporation, situated in the city of Youngstown, county of Mahoning and State of Ohio, consisting of about forty-five acres of land, with the two blast furnaces, six iron rolling mills, and other buildings, improvements, fixed machinery, and with other fixtures thereon, and of all the interest of said corporation in what is known as the Struthers blast-furnace property, comprising about 32 acres, in the township of Poland, in said county, and is further secured by a pledge in writing to said Dan. P. Eells and John Hay upon the trust aforesaid of 793 shares of the
48 capital stock of the Mahoning Coal Company, a mining corporation of the said State of Ohio, to which mortgage and pledge reference is hereby made, and upon the certificate of said trustees hereon endorsed this bond will become secured by the said mortgage and by said pledge of shares.

In testimony whereof the said corporation, Brown, Bonnell & Co., has caused its corporate seal to be hereto affixed and this bond to be subscribed by its president and treasurer and the accompanying interest warrants to be authenticated by the lithographed fac simile of the signature of said treasurer on this third day of April, A. D. 1882.

[SEAL.]

——— ———, *President.*
——— ———, *Treasurer.*

(*Trustees' Certificate.*)

We hereby certify that the within bond is issued under and by virtue of the deed in the nature of a mortgage therein named, and that the payment of the principal and interest of said bond is secured by said mortgage and by the pledge of shares therein named.

(*Coupons.*)

$150.00. On the third day of Oct., 1882, Brown, Bonnell and Company will pay to the bearer, at the Commercial National Bank, in the city of Cleveland, Ohio, one hundred and fifty dollars, being the semi-annual interest that day due on its bond No. —.

F. H. MATHEWS, *Treas.*

And whereas, for the purpose of securing the payment of said bonds and the interest thereon, the party of the first part is authorized and has by due action taken determined to make this deed in the nature of a mortgage and directed its president and secretary to execute and deliver said deed to the parties of the second part as trustees:

49 Now, therefore, in order to secure the payment of said bonds and the interest coupons thereto attached, and the performance on its part of its covenants in this indenture contained, and in consideration of one dollar to it paid by the parties of the second part, the receipt whereof is hereby acknowledged, the party of the first part does hereby grant, bargain, sell, convey, and confirm unto the parties of the second part and the survivors of them unto his heirs and assignees forever all of the following twenty-nine parcels of land, situate in the city of Youngstown, county of Mahoning and State of O., and all and singular the two blast furnaces, the six rolling mills, and all the other buildings, structures, improvements, fixed machinery, and other fixtures thereon, of which parcels of land the 1st parcel is part of the lot No. 10, in the east division of outlots in the original town plat of Youngstown, and is bounded as follows: Beginning at a post on the east line of the highway to Gibson's Fording and 15 feet from common water mark in the Pennsylvania and Ohio canal, running thence south on the east line of said road 16 rods; thence east 10 rods; thence north 16 rods; thence west on the bank of said canal 15 feet from the common water mark 10 rods to the place of beginning, containing one acre of land. The 2nd parcel is also a part of said outlot 10, and is bounded as follows: Beginning at the northeast corner of the 1st parcel 15 feet from the top water line of the said canal, running thence south 18 rods and 28 links to the Mahoning river; thence eastwardly on the north bank of said river 18 rods and 12 links to a post near the outlet of a ditch; thence north parallel with the east line of the 1st parcel 16 rods and 21 links to the bank of said canal, and thence on the bank of said canal

50 N. 86½° W. 18 rods to the place of beginning, containing about two acres and 17 perches. The 3rd parcel is bounded as follows: Beginning at the low-water mark on the north bank of the Mahoning river and on the east line of the 2nd parcel, on which stands the Falcon furnace, running thence north on said east line of the 2nd parcel to a stake 15 feet from the water in said canal; thence eastwardly along the bank of said canal, keeping 15 feet from the water therein, to a point such that if a line were drawn from it southerly parallel with the first-named boundary line of this parcel so as to meet a line drawn eastwardly along the bank of said river from the place of beginning there would be contained within said four boundary lines one acre of ground, and said parcel has for its boundary lines the said four described lines. The 4th parcel is known as part of lot No. 1, in the original survey of the south division of outlots in the town plat of Youngstown, and is bounded on the northerly side by the outer line of the towing path of said canal; on the easterly side by the highway or street leading to the

Mahoning bridge; on the southerly side by the Mahoning river, and on the westerly side by the west line of said lot No. 1, which is also the east line of lands formerly owned by the late William Rayen, deceased. The 5th parcel is bounded as follows: Beginning on the northwest corner of a lot known as the Phœnix furnace lot and at a point 15 feet south of the common water mark in said canal, thence running S. 29¼ degrees W. 8 chains and 35 links to low-water mark on the north bank of the Mahoning river; thence N. 82¾ degrees W. 6 chains 7½ links;
51 thence N. 29¼ degrees E. 3 chains 30 and one-third links; thence N. 60 and three-fourths degrees W. 1 chain 89½ links; thence N. 29¼ degrees E. 5 chains and 30 links to an iron stake 15 feet south of top water line of said canal; thence S. 73 degrees E. 1 chain 72 links; thence S. 76 and three-fourths degrees E. 6 chains 4 links to the place of beginning, containing about $5\frac{924}{1000}$ acres. The 6th parcel is bounded and described as follows: Beginning at a point on the north line of the right of way and lands formerly belonging to the Pennsylvania and Ohio Canal Company where said line is met by the west line of the east half of lot No. 33 of Bone and Wick's subdivision of a part of the south division of outlots in the town plat of Youngstown, thence running northerly along said west line to the south line of the north half of said lot No. 33; thence westerly along said south line and parallel with Bane street to the west line of said lot 33; thence northerly along said west line of said lot 30 feet; thence easterly parallel with Bane street to the west line of the east half of said lot; thence northerly along said west line of said east half of said lot 12 feet; thence easterly parallel with Bane street to the east line of said lot 33; thence northerly along said east line of said lot to the south line of Bane street; thence easterly along the south line of Bane street to a point where said south line of Bane street would be met by the production southerly of the east line of Walnut street; thence northerly along the southerly production of said east line and along the east line of Walnut street to the northwest corner of lot No. 21 of said Bane and Wick's subdivision; thence easterly parallel with Bane street to the northeast corner of lot No. 16 of Bane & Wick's said subdivision; thence easterly along the south line of an alley to the west line of Presq'
52 Isle street; thence southerly along said west line last named to the north line of the right of way and lands formerly belonging to the said canal company, and thence westerly along said north line of the right of way and lands last named to the place of beginning. The 7th parcel is a part of lot No. 252 of the latest numbering of lots in said city, and is bounded as follows: Beginning at the southeast corner of said lot, thence northerly along the east line thereof 18 feet; thence by a southwesterly course to a point on the south line of said lot distant westerly 45½ feet from the southeast corner of said lot; thence easterly along the south line of said lot 45½ feet to the place of beginning. The 8th parcel is bounded as follows: Beginning at a point on the east line of Presq' Isle street S. 2½ degrees W. 26 links from the southwest corner of a

lot conveyed to Brown, Bonnell & Co. by C. H. Andrews *et al.* by a deed which is recorded in the records of said county, in volume 20, at page 84 *et seq.*, thence running S. 2½ degrees W. along said east line of said street 20 feet; thence S. 81½ degrees E. 1 chain and 52 links; thence north 4 degrees E. 20 feet; thence N. 81½ degrees W. 1 chain and 53 links to the place of beginning. The 9th parcel is that part of lot 33 which was conveyed to Andrews & Hichcock 2nd July, 1860, by David Tod, and is bounded as follows: Beginning at a stake on the line between said lot and lot 32 1 chain 68 links S. 29½ degrees W. from the south line of Front street, thence running S. 29½ degrees W. 95 links to the canal; thence up said canal 49 links; thence N. 4 degrees E. 1 chain 50 links; thence S. 82¼ degrees E. 31 links; thence S. 87 and three-fourths degrees E. 58 links to the place of beginning.

53 The 10th parcel is that part of outlot No. 32 of the southeast division of outlots in the former village of Youngstown which on the 12th Sept., 1859, was conveyed by J. Warner to Andrews & Hitchcock, and is bounded as follows: Beginning at a stake where the west line of said lot 32 meets the berme bank of said canal, running thence N. 29½ degrees E. 95 links; thence S. 85 degrees E. 1 chain 23 links; thence S. 28½ degrees W. 80 links; thence S. 89 degrees W. 1 chain 30 links to the place of beginning: The 11th parcel is the south part of city lot No. 281 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presq' Isle street S. 2½ degrees W. 2 chains 78¼ links from the southeast corner of Front and Presq' Isle streets, thence running along the east line of Presq' Isle street S. 2½ degrees W. 26 links; thence S. 79 and three-fourths degrees E. 1 chain 53 links; thence north 4 degrees E. 21 links; thence N. 77 degrees W. 1 chain 55 links to the place of beginning. The 12 parcel is known as city lot No. 280 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presq' Isle street S. 2½ degrees W. 20 feet from the southwest corner of said lot No. 281; thence running along the east line of said street S. 2½ degrees W. 65½ links to said canal; thence along the north side of high water in said canal S. 83½ degrees E. 1 chain 50 links; thence N. 4 degrees E. 52½ links; thence N. 79 and two-thirds degrees W. 1 chain 52 links to the place of beginning. The 13 parcel is all the land which was conveyed on Dec. 5th, 1883, by William Lindsay *et ux.* to the firm of Brown, Bonnell & Company by a deed which is recorded in vol. 28, at page 233 *et seq.*,

54 which deed is here referred to. The 14th parcel is all the land ever owned or occupied by the Pennsylvania and Ohio Canal Co. which lies between the centre of Crab creek on the east and on the east side of what is known as Rany's mill on the west, including between said east and west boundaries all of the land ever occupied by berme bank, water channel, and towing path of said canal. The 15th parcel comprises all the land conveyed to the firm of Brown, Bonnel & Co. by Henry Manning on Nov. 26th, 1883, by a deed recorded in said records in vol. 19, at page 711, except such part of said lands as lie in the 14th parcel, and including all

such rights as were conveyed by said Henry Manning in his said deed, which is here referred to. The 15 parcel above named was conveyed on the 9th day of Oct., 1875, by Joseph H. Brown *et al.* to the party of the first part by a deed which is recorded in the records of said county in vol. 38, at page 606 *et seq.*, and is here referred to. The 16th parcel is the west half of the south half of lot No. 33, in Bane and Wick's said subdivision, and also all of lot 32, in said subdivision, except such part of said lot 32 as was sold by Almon Raney and wife and Bostwick Raney to Ellen Farrall, and except also such part of said lot 32 as was conveyed by said Almon Raney, wife, and Bostwick Raney to Ann McGraw by a deed which is recorded in the records of said county in vol. 19, at page 493. Said 16th parcel was conveyed to said corporation 9th October, 1879, by H. O. Bonnell *et ux.* by a deed recorded in said records in vol. 45, at page 352. The 17th parcel is the north half of the west half of the lot No. 33 of said Bane and Wick's subdivision, excepting so much thereof as was conveyed away by Geo. A. Young prior to March 24th, 1880.
55 The part above conveyed of said north half was conveyed to said corporation by A. W. Jones *et ux.* 24th April, 1880, by a deed recorded in said records in vol. 47, at page 384, and this 17th parcel shall contain as a part thereof all the interest conveyed by said Jones in said deed to said corporation in another part of said lot 33 of said subdivision. The 18th parcel contains all the part of lot 275 of the latest enumeration in said city which was conveyed to said corporation by Mary Degen *et al.* 24th Nov., 1880, by a deed which is recorded in said records in vol. 48, at page 98. The 19th parcel is city lot No. 574 of the latest enumeration in said city, and was conveyed to said corporation 3rd January, 1881, by John Regney *et ux.* by deed recorded in records of said county in vol. 45, at page 583. The 20th parcel is lot No. 572 of the latest enumeration in said city, and was conveyed 8th February, 1881, to said corporation by Bryan Kennedy *et al.* by a deed recorded in vol. 49, at page 14. The 21st parcel is lot No. 571 of the latest enumeration in said city, and was conveyed 22nd Feb., 1881, to said corporation by E. M. Willson, administrator of Patrick Corrigan by a deed recorded in the said records in vol. 48, at page 291. The 22nd parcel is the east half of lot No. 580 of the latest enumeration in said city, and was conveyed to said corporation 19th March, 1881, by Christian Ludt *et al.* by a deed recorded in said records in vol. 49, at page 93. The 23rd parcel is the northwest part of original lot No. 11 as shown by plat of village lots of Youngstown made by Dr. Henry Manning and recorded in Mahoning County Records of Plats, vol. 1, page 51, bounded as follows: Beginning at the northwest corner of said lot No. 11;
56 thence N. 74½ degrees E. 1 chain to lot owned by M. Fee and now known as city lot No. 582, new number; thence south 2 chains 71½ links; thence west 98 links to east line of original lot No. 12; thence N. ½ degree E. 2 chains 44½ links to the place of beginning, containing about (¼) one-fourth of an acre of land, and was conveyed 1st July, 1881, to said corporation by Thomas George *et al.* by a deed recorded in said records in vol. 49, at page 392. The 24th parcel is the west half of lot 580 of the latest enumeration in

said city, and is the same land which was conveyed to said corporation 1st July, 1881, by Catharine Scanlon *et al.* by a deed recorded in said records in vol. 49, at page 392. The 25th parcel is part of a larger parcel of ground conveyed to John Stambaugh, trustee, by W. S. Parmelee, trustee, 31st July, 1871, by a deed recorded in said records in Deed Book 31, at page 273 *et seq.*, and is bounded and described as follows: Beginning on the east line of said larger parcel at the middle of a stone monument standing at the northwest corner of a piece of ground conveyed by the Liberty and Vienna Railroad Company to the Ashtabula, Youngstown & Pittsburgh Railroad Company by a deed dated 25th August, 1871, and recorded in said records in vol. 33, at page 463 *et seq.*, thence running along the east line of said larger parcel conveyed as aforesaid by W. S. Parmelee, trustee, N. 30 degrees 28 minutes E. about $398\frac{7}{10}$ feet to a stone monument at a point 15 feet southerly from the line of high-water mark on the south side of the Pennsylvania and Ohio Canal; thence along a line parallel with and distant 15 feet southerly from the said line of high-water mark on the south side of said canal N. 49 degrees 44 minutes W. about $135\frac{3}{4}$ feet to a point
57 which, measured along a line perpendicular to the east line of Market street, is distant easterly 150 feet from the east line of Market street; thence along a line parallel with and distant 150 feet easterly from the east line of Market street S. 31 degrees and 20 minutes W. about 421 and two-tenths feet to the north line of said ground conveyed as aforesaid to the Ashtabula, Youngstown and Pittsburgh Railroad Co., and thence along the said north line of land conveyed to said railroad company S. 5902 minutes E. about 137 and seven-tenths feet to the beginning, containing 1 acre and $\frac{28388}{100000}$ of an acre of land, and is the same land conveyed to said corporation by John Stambough, trustee, *et al.* 14th July, 1881, by a deed recorded in said records in vol. 50, at page 66 *et seq.* The 26th parcel is the east end of outlot No. 2, in said city, contains about 2 & $\frac{902}{1000}$ of an acre of land, and is the same land conveyed to said corporation 30th July, 1881, by Edwin Bell *et al.* by a deed recorded in said records in vol. 50, at page 63 *et seq.*, which deed is here referred to for a more particular description of said last-named parcel. The 27th parcel is lot No. 576 of the latest enumeration in said city, and was conveyed to said corporation 16th November, 1881, by Mary Kelley by a deed recorded in said records in vol. 51, at page 34. The 28th parcel is the east part of lot No. 575 of the latest enumeration in said city, and bounded as follows: Beginning at the northwest corner of lot No. 574, on the south line of the Pennsylvania and Ohio canal, thence in a westerly course parallel with the south line of said lot No. 575 25 feet; thence south with the west line of lot No. 574 to the north line of lot No. 573; thence east along the north line of said
58 lot 573 25 feet to the southwest corner of said lot No. 574, and thence north along the west line of lot No. 574 to the place of beginning, and was conveyed to said corporation 25th November, 1881, by May Joice *et al.* by a deed recorded in said records in vol. 51, at page 63. The 29th parcel is the west part of lot No.

575 of the latest enumeration in said city, situated on the south side of the Pennsylvania and Ohio canal, bounded on the north by the towing path of said canal; on the east by the east part of said lot No. 575, which said east part was conveyed by Charles Gillen to Mary Kelly; on the south by lots 573 and 577, and on the west by lot No. 576, and was conveyed to said corporation 2nd December, 1881, by Michael Conners *et ux.* by a deed recorded in said records in vol. 51, at page 90; also all the right, title, and interest of the party of the first part in and to that lot of land on the northeast corner of Bane and Champion streets, in said city of Youngstown, on which stands the new brick office recently erected by it; also all the other lands and rights in lands in the said city of Youngstown owned by said party of the first part as a part of its iron manufacturing works therein, saving the reservations and exceptions hereinafter written; also all the right, title, and interest of the party of the first part in and to those two certain parcels of ground in the township of Poland, in said county, one of about 29 & $\frac{49}{100}$ acres and one of about 2 & $\frac{3}{100}$ acres, known as the Struthers furnace property, lately purchased by contract by the party of the first part from Thomas Struthers *et al.* and now in its possession, and in blast furnace and all buildings, structures, fixed machinery, and other fixtures thereon, saving and reserving, nevertheless, out of
59 and from the above conveyance all that part of the 29 parcels first above named which was conveyed by the party of the first part to the N. Y., P. & O. Railroad Company as a right of way for its railroad, and all that part of the residue of said 29 parcels which lies north of the land so conveyed to said railroad company; and also reserving and excepting all the rights in and all parts of all the said first-named 29 parcels of land which were reserved and excepted to the respective grantors in all of the deeds to the party of the first part above named; and this conveyance is made subject to the stipulations in all of said deeds contained:

To have and to hold all and singular the premises aforesaid, but subject to the reservations above named, unto the said parties of the second part as joint tenants and not as tenants in common, and to the survivor of them and to his heirs and assigns forever, but nevertheless in trust to secure the payment according to their tenor, and to the successive holders and owners thereof, of each said bonds and of each of said interest coupons thereto attached, and upon the further trusts and conditions following and subject to the powers and agreements hereinafter named; and it is expressly covenanted and agreed between the parties to this indenture as follows—that is to say:

First. That the said bonds shall be certified by the parties of the second part according to the form of certificate above named, and until so certified shall not become secured hereby; that until default shall be made by the party of the first part in the payment pursuant to the terms thereof of the principal or interest of any of said bonds, and so long as the party of the first part shall
60 well and truly perform all its covenants contained in said bonds and in this indenture, it shall remain in the quiet and

peaceable possession, use, enjoyment, and control of all the property herein conveyed, and if it shall well and truly pay according to the tenor thereof each and every one of said bonds, with all the interest thereon, and if it shall also at all times keep and perform all its other covenants and agreements herein contained, or if, in case of any default by it in the performance of any of its said other covenants and agreements, it shall, within thirty days after receiving notice thereof, either from the parties of the second part or their survivors or their successors in the trust, fully repair such default, then this indenture and all the right, title, and estate hereinbefore conveyed shall become and remain void and of no effect.

Second. That so soon as the party of the first part shall, in accordance with the terms of its said contract with said Struthers and others, become seized of the legal title of said Struthers furnace property it will, upon request of the parties of the second part or the survivors, convey the same to them upon the same trusts herein contained.

Third. That the party of the first part will, so long as any of said bonds or the interest thereon may be outstanding and unpaid, keep all of said conveyed property in good and reasonable repair and condition, will cause all taxes thereon to be promptly paid, and will neither do nor suffer to be done any act whereby the lien hereby created shall be impaired, subject, however, to its right hereinbefore reserved to use and employ said property in the ordinary manner; and it further hereby agrees to pay all of said bonds and the interest warrants attached according to their true tenor.

61 Fourth. That while any of said bonds or interest remains unpaid the party of the first part will keep insured in good and responsible companies against loss or damage by fire all such of the inflammable part of the property hereby conveyed as shall be reasonably insurable in the aggregate sum — not less than two hundred thousand dollars, if so much insurance can be obtained, such insurance to be made and kept payable to the parties of the second part as trustees herein, but the money received by the trustees in case of loss or damage by fire on account of such insurance shall, upon the request of the parties of the first part, be applied by the parties of the second part to the repairing, replacing, or rebuilding under the joint direction and control of both parties the property so damaged or destroyed.

Fifth. That the lien hereby created shall not in anywise be lessened or impaired by reason of the additional security for the payment of said bonds as named in the said bonds.

Sixth. That in case of a foreclosure of the lien hereby created the avails of the property sold, first deducting costs and a reasonable compensation to be paid to the parties of the second part herein, shall be applied to the payment of all said bonds there remaining outstanding and unpaid, without preference to any because of difference in the time of maturity, but in such case all of the matured interest coupons on all outstanding bonds shall be paid before payment of any part of the principal.

Seventh. That the party of the first part further covenants and

agrees that it has hitherto never executed any mortgage or other conveyance creating any lien — encumbrance on any of the
62 above-conveyed lands.

In testimony whereof the party of the first part has caused its corporate seal to be hereto affixed and these presents to be subscribed by its president and secretary, and the parties of the second part, in token of their acceptance of the trusts hereby created, have hereunto set their hands and seals on the day first above written.

Signed, sealed, acknowledged, and delivered in presence of—

HERBERT C. AYER, *President.*
A. W. JONES, *Secretary.*

F. H. MATHEWS,
S. B. GOODALE,
As to H. C. Ayer.

SIDNEY STRONG,
WILLIAM R. NURRICH,
As to A. W. Jones.

[SEAL.] BROWN, BONNELL & CO.

THE STATE OF NEW YORK, }
County of New York, City of New York, } *ss:*

Before me, a commissioner of deeds for the State of Ohio, residing in said city and county, duly commissioned, personally came Herbert C. Ayer, president of the corporation Brown, Bonnell & Company, and acknowledged that, as president of said corporation, he subscribed the foregoing indenture, and that his execution thereof and the affixing of the common seal of the corporation thereto was done by direction of a resolution of the board of directors, and that the foregoing indenture was his free act and deed as such president and the free act and deed of the said corporation.

63 Witness my hand and official seal on this 16th day of June, anno Domini 1882.

S. R. GOODALE,
Commissioner for Ohio, Resident in N. Y. City.

THE STATE OF OHIO, }
Mahoning County, } *ss:*

Before me, a notary public within and for said county, personally came A. W. Jones, secretary of the corporation Brown, Bonnell & Company, and acknowledged that as such officer he subscribed his name to the foregoing indenture and affixed thereto the common seal of said corporation, and that the same was his free act and deed as such officer and the free act and deed of said corporation, and, being sworn, he says that what purports to be the common seal of the said corporation, hereto affixed, is the genuine corporate seal thereof, and was affixed to said indenture by him by order of the board of directors of said corporation.

Witness my hand and seal notarial on this 14th day of June, anno Domini 1882.

WILLIAM R. MERRICH,
Notary Public.

[SEAL.]

64 "EXHIBIT Z."

NEW YORK, *Oct.* 20, 1883.

Henry Crawford, of Chicago, Ill., is hereby appointed general counsel of Brown, Bonnell & Company, and as such is authorized and directed to take full and exclusive charge of all litigation against or in favor of said corporation and to fully represent and appear for it in all legal proceedings and take care of its interests in all negotiations for arrangements or composition with its creditors or for reorganization.

BROWN, BONNELL & COMPANY,
By H. C. AYER, *President.*

65 And afterwards, to wit, on December 18th, 1883, a motion was filed in said cause, which is in the words and figures following, to wit:

Circuit Court of the U. S., Northern District of Ohio.

LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL & CO.

The defendant, Brown, Bonnell & Co., by Henry Crawford, solicitor, and by F. H. Matthews, vice-president and acting president of said Co., by leave of court first had, moves the court to discharge the receiver heretofore appointed herein on Feb. 20, 1883, and for cause assigns:

1st. That said court has no jurisdiction over the subject-matter of this controversy and no jurisdiction to appoint a receiver.

2nd. Because on November 24, 1883, the said judgment of the Negaunee Concentrating Company was fully paid and discharged, together with all costs, by payment of the full amount thereof to the clerk of this court, as duly appears by record.

HENRY CRAWFORD, *Solicitor.*
F. H. MATTHEWS,
Vice-President & Acting Pres't of Brown, Bonnell & Co.

66 And afterwards an order was entered in said cause, which is in the words and figures following, to wit:

MONDAY, *December 24th*, 1883.

LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL AND CO. } Chancery, No. 4195.

In this cause the motion filed herein by Henry Crawford, as so-

licitor for the defendant, Brown, Bonnell and Co., and by F. H. Mathews, as vice-president and acting president of said defendant company, whereby the court is asked to discharge the receiver heretofore appointed herein for causes stated in said motion, came on to be heard; whereupon, upon consideration, the court orders that the said motion be overruled and the prayer thereof disallowed.

67 And afterwards, to wit, on March 1st, 1884, a response of divers creditors was filed in said cause, which response is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL AND CO. } In Equity.

In the matter of the claim of Dan. P. Eells and John Hay, trustees, and the Commercial National Bank, Charles A. Otis, William H. Harris, Dan. P. Eells, and John Hay and Samuel Mather, as executors of the estate of Amasa Stone, deceased.

The respondents, The Manufacturers' and Traders' Bank of Buffalo, New York, The First National Bank of Youngstown, The Second National Bank of Youngstown, The Sharon National Bank, Charles S. Worden, The Florence Mining Company, Westerman, Filer and Co., Andrews and Hitchcock, and The Briar Hill Iron and Coal Company, in behalf of themselves and all other creditors of the defendant, Brown, Bonnell and Co., who may choose to avail themselves of this response, make answer unto the said claim aforesaid and say:

They admit the execution and delivery of the mortgage by Brown, Bonnell and Co. to John Hay and Dan. P. Eells, trustees, in manner and form as is alleged.

They further admit that the Commercial National Bank claim to hold $150,000 of the bonds purporting to be secured by such mortgage to secure a claim it holds against the said defendant and Dan. P. Eells, Charles A. Otis, William H. Harris, and John Hay and Samuel H. Mather, as executors of the estate of Amasa Stone,
68 deceased. Each claim to hold $80,000 of the bonds purporting to be secured by such mortgage as collateral to the claims held by them respectively.

The respondent The Manufacturers' and Traders' Bank of Buffalo, N. Y., shows that it did, on the — day of ——, 1883, by the consideration of the circuit court of the United States for the northern district of Ohio, duly recover a judgment at law against Brown, Bonnell and Co. for $——, which still remains in full force, unreversed, and wholly unpaid.

The other respondents admit that they are, together with divers other persons and corporations, judgment creditors of the defendant corporation by virtue of judgment duly entered in the common pleas court of Mahoning county, Ohio, and the dates and amounts

of all such judgments and the names of the judgment creditors are all fully set forth in a schedule attached hereto, which these respondents pray may be taken as a part of their pleading.

And thereupon these respondents aver that, except the judgment recovered in this court and the several judgments recovered in the said State court, there are no judgments of any kind existing against said Brown, Bonnell and Co., and that said corporation is the owner in fee simple absolute of a large and valuable manufacturing property in said county of Mahoning and State of Ohio, consisting of real estate, blast furnaces, rolling mills, coal mines, machinery, equipment, and appurtenances, worth fully one million dollars, and that each and every of the judgments aforesaid from the date of its recovery became and still is a lien upon all and singular
69 such real estate paramount and superior to the claim of the said John Hay and Dan. P. Eells, trustees, or to the said alleged mortgage.

These respondents further show that the said Brown, Bonnell and Co. is a corporation organized under the general laws of Ohio regulating the incorporation of manufacturing companies, and that it has been organized for about twenty years, during all which time it has been engaged actively in the manufacture and sale of iron, and has become the owner of the largest plant and trade of any establishment of the kind in the West. In order to carry on its trade successfully it was obliged to use its credit in the purchase of the large supplies which it was constantly procuring and in the discount of the paper it received for its product, and during the entire period of its existence, from the origin thereof down to February —, 1883, it had never had any mortgage or other incumbrance on its property, and never had issued any bonds, and in consequence thereof it had been enabled to command almost unlimited credit with banks and ore, coal, and supply firms.

These respondents further show that continuously from January, 1882, to January, 1884, Dan. P. Eells, Charles A. Otis, and William H. Harris were large stockholders in and were directors of the said Brown, Bonnell and Co. Amasa Stone was a large stockholder in the corporation, and had been a director previous to 1882, and the said Eells, Otis, and Harris and Stone were large stockholders and officials of the Commercial National Bank of Cleveland.

These respondents aver that the said mortgage and bonds
70 were never authorized by any vote of the stockholders of Brown, Bonnell and Co., and were never submitted to any meeting of stockholders, and some of the stockholders did not even know of its existence until after this action was instituted and a receiver appointed.

The only authority for the execution of said bonds and mortgage was the passage of a resolution by the board of directors of the corporation on April 3, 1882, a copy of which is hereto attached, marked

licitor for the defendant, Brown, Bonnell and Co., and by F. H. Mathews, as vice-president and acting president of said defendant company, whereby the court is asked to discharge the receiver heretofore appointed herein for causes stated in said motion, came on to be heard; whereupon, upon consideration, the court orders that the said motion be overruled and the prayer thereof disallowed.

67 And afterwards, to wit, on March 1st, 1884, a response of divers creditors was filed in said cause, which response is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL AND CO. } In Equity.

In the matter of the claim of Dan. P. Eells and John Hay, trustees, and the Commercial National Bank, Charles A. Otis, William H. Harris, Dan. P. Eells, and John Hay and Samuel Mather, as executors of the estate of Amasa Stone, deceased.

The respondents, The Manufacturers' and Traders' Bank of Buffalo, New York, The First National Bank of Youngstown, The Second National Bank of Youngstown, The Sharon National Bank, Charles S. Worden, The Florence Mining Company, Westerman, Filer and Co., Andrews and Hitchcock, and The Briar Hill Iron and Coal Company, in behalf of themselves and all other creditors of the defendant, Brown, Bonnell and Co., who may choose to avail themselves of this response, make answer unto the said claim aforesaid and say:

They admit the execution and delivery of the mortgage by Brown, Bonnell and Co. to John Hay and Dan. P. Eells, trustees, in manner and form as is alleged.

They further admit that the Commercial National Bank claim to hold $150,000 of the bonds purporting to be secured by such mortgage to secure a claim it holds against the said defendant and Dan. P. Eells, Charles A. Otis, William H. Harris, and John Hay and Samuel H. Mather, as executors of the estate of Amasa Stone,
68 deceased. Each claim to hold $80,000 of the bonds purporting to be secured by such mortgage as collateral to the claims held by them respectively.

The respondent The Manufacturers' and Traders' Bank of Buffalo, N. Y., shows that it did, on the — day of ——, 1883, by the consideration of the circuit court of the United States for the northern district of Ohio, duly recover a judgment at law against Brown, Bonnell and Co. for $——, which still remains in full force, unreversed, and wholly unpaid.

The other respondents admit that they are, together with divers other persons and corporations, judgment creditors of the defendant corporation by virtue of judgment duly entered in the common pleas court of Mahoning county, Ohio, and the dates and amounts

of all such judgments and the names of the judgment creditors are all fully set forth in a schedule attached hereto, which these respondents pray may be taken as a part of their pleading.

And thereupon these respondents aver that, except the judgment recovered in this court and the several judgments recovered in the said State court, there are no judgments of any kind existing against said Brown, Bonnell and Co., and that said corporation is the owner in fee simple absolute of a large and valuable manufacturing property in said county of Mahoning and State of Ohio, consisting of real estate, blast furnaces, rolling mills, coal mines, machinery, equipment, and appurtenances, worth fully one million dollars, and that each and every of the judgments aforesaid from the date of its recovery became and still is a lien upon all and singular
69 such real estate paramount and superior to the claim of the said John Hay and Dan. P. Eells, trustees, or to the said alleged mortgage.

These respondents further show that the said Brown, Bonnell and Co. is a corporation organized under the general laws of Ohio regulating the incorporation of manufacturing companies, and that it has been organized for about twenty years, during all which time it has been engaged actively in the manufacture and sale of iron, and has become the owner of the largest plant and trade of any establishment of the kind in the West. In order to carry on its trade successfully it was obliged to use its credit in the purchase of the large supplies which it was constantly procuring and in the discount of the paper it received for its product, and during the entire period of its existence, from the origin thereof down to February —, 1883, it had never had any mortgage or other incumbrance on its property, and never had issued any bonds, and in consequence thereof it had been enabled to command almost unlimited credit with banks and ore, coal, and supply firms.

These respondents further show that continuously from January, 1882, to January, 1884, Dan. P. Eells, Charles A. Otis, and William H. Harris were large stockholders in and were directors of the said Brown, Bonnell and Co. Amasa Stone was a large stockholder in the corporation, and had been a director previous to 1882, and the said Eells, Otis, and Harris and Stone were large stockholders and officials of the Commercial National Bank of Cleveland.

These respondents aver that the said mortgage and bonds
70 were never authorized by any vote of the stockholders of Brown, Bonnell and Co., and were never submitted to any meeting of stockholders, and some of the stockholders did not even know of its existence until after this action was instituted and a receiver appointed.

The only authority for the execution of said bonds and mortgage was the passage of a resolution by the board of directors of the corporation on April 3, 1882, a copy of which is hereto attached, marked

Exhibit "A," and, although it is by said resolution recited that it was intended to "negotiate" $500,000 coupon bonds, in truth and in fact it was understood and agreed by the directors of the corporation that in order to preserve to the fullest extent the then existing credit of the corporation that it would not "negotiate" any such securities, but that they would conceal the existence of any such encumbrance, and that the said mortgage should not be recorded and the bonds should only be used as collateral with directors and others who would be safely trusted not to disclose the existence of the encumbrance, and that by such means the credit of the corporation could be maintained during the period of depression which was taking place in the iron trade.

The said Eells, Hay, Stone, Harris, Otis, and the Commercial National Bank all understood and concurred in this arrangement, and it was distinctly agreed with the Commercial National Bank and said Stone as late as December, 1882, that unless the said Brown, Bonnell and Co. or its sales agent, John V. Ayer's Sons, should become involved so as to threaten a suspension of payment that the said mortgage should remain unrecorded and its existence
71 concealed from all persons having dealings with Brown, Bonnell and Company.

Your respondents claim that this scheme was fraudulent as to creditors, and was devised to give such corporation a fictitious credit by holding out to those dealing with it that it was possessed, as it always theretofore had been, of a large amount of unencumbered property; and by concealing such mortgage and keeping the same from record the corporation induced your respondents and other creditors to make loans and sell supplies on credit which they would not have done if they had been cognizant of the real state of facts.

Your respondents show that, although the said mortgage was authorized by the board in April, 1882, and was delivered to the trustee Eells shortly after its execution, it was not recorded until on February 19th, 1883, and was then recorded solely in consequence of a telegram from the sales agent, John V. Ayer Sons, of that day announcing their failure, and on said date the said Eells well knew that the said Brown, Bonnell and Co. would also be forced to suspend payment.

Your respondents aver that during the period intervening between April 3, 1882, and February 19, 1883, when such false credit was created by the fraudulent concealment of said mortgage, the said Brown, Bonnell & Co. created the entire body of its liabilities which are now outstanding and unpaid.

These respondents aver that it is contrary to equity that the parties to such a fraud are creditors and being themselves stockholders and directors of said corporation, and that the bank of which they are also officers should be allowed to claim a priority over other cred-

itors by reason of the record of a fraudulent and long-con-
72 cealed mortgage when the corporation was in a failing condition, as they then well knew.

These respondents therefore claim that the said mortgage and bonds ought to be declared fraudulent and void as to creditors, and the said bonds ordered to — delivered up and destroyed, and the due rights and priorities of these respondents as judgment creditors having lawful liens and priorities on said property should be declared and protected by the court as they may be adjudged entitled.

A. W. JONES,
WILLEY, SHERMAN AND HOYT,
Solicitors.

H. CRAWFORD, *Of Counsel.*

73 EXHIBIT "A."

YOUNGSTOWN, *April 3rd*, 1882.

Resolved, That this corporation issue and negotiate its coupon bonds in the aggregate sum of five hundred thousand dollars in the denomination of five thousand dollars each, bearing interest at six per cent. per annum, and that its president and secretary be hereby empowered and instructed to execute and deliver to Dan. P. Eells and John Hay, as trustees for the holders of said bonds, a mortgage in the words and figures hereinafter written, the form and terms of said bonds being set out in full in said mortgage which next hereafter follows.

And be it further resolved, That to further secure payment of said bonds and coupons the president of this corporation be authorized to assign to said Dan. P. Eells and John Hay, as trustees, 793 shares of the capital stock of the Mahoning Coal Company owned by this corporation, and in that behalf to execute an agreement with them in the words following, to wit:

This agreement, made this 3rd day of April, 1882, at Youngstown, Ohio, between Brown, Bonnell & Co., a corporation of the State of Ohio, of the first part, and Dan. P. Eells and John Hay, of the second part, witnesseth:

That whereas the said corporation has resolved to borrow money in the sum of five hundred thousand dollars ($500,000) and to issue therefor its bonds, payable to bearer, in the denomination of five thousand dollars each, the said bonds to be of the tenor named in the form thereof set out in a certain real estate mortgage of this date executed by said corporation to the parties of the second part herein to secure payment of the said bonds, to which mortgage reference is hereby made, such mortgage conveying to said parties of

74 the second part, as trustees, all the real estate in the city of Youngstown, Mahoning county, Ohio, known as the Brown, Bonnell & Co. iron works;

And whereas for the further security of the payment of said bonds and all of them and of the interest coupons thereon the party of the first part has this day assigned to the parties of the second part as trustees seven hundred and ninety-three (793) shares of the capital stock of the Mahoning Coal Company, a mining corporation of said State, and has delivered to the parties of the second part, with the foregoing assignment endorsed thereon, the certificate issued by said mining corporation to the party of the first part for the said 793 shares:

Now, therefore, it is agreed between the parties aforesaid as follows, to wit:

1. That so long as the party of the first part shall not be in default in the payment according to their tenor of the aforesaid bonds and interest coupons or any of them all of the said shares shall remain on the share transfer books of said mining corporation, standing in the name of the party of the first part, with full power in it to vote the same at all meetings of said mining corporation the same as if said assignment in pledge had not been made, and so long — the party of the first part shall be entitled to claim and have paid to it for its own use and benefit all dividends and profits and dividends of coal made by said mining company on account of said 793 shares, notwithstanding the property and assets of said mining company and the value of said shares be thereby impaired.

2. That in case of a sale of said shares on the trust herein created the avails thereof, first deducting cost and a reasonable compensation to the parties of the second part, shall be applied to the
75 payment of all of said bonds then remaining outstanding and unpaid without preference to any because of difference in time of maturity, but in such case all the matured coupons on all outstanding bonds shall be paid before payment of any part of the principal.

3. So soon as all of said bonds and interest coupons shall be paid the parties of the second part shall assign all said shares to the party of the first part.

In testimony whereof the party of the first part has caused its corporate name to be written hereunder by its president, and the parties of the second part have hereunto set their hands on the day first above written.

Thus executed in duplicate.

(Signed) BROWN, BONNELL & CO.,
By H. C. AYER, *President.*
(Signed) DAN. P. EELLS.

There being no further business before the meeting, upon motion, the same was adjourned.

(Signed) H. C. AYER, *President.*

F. H. MATTHEWS, *Sec'y P. T.*

YOUNGSTOWN, O., *Dec. 29th*, 1882.

A meeting of the board of directors of Brown, Bonnell & Co. having been legally called was this day held at the principal office, in this city.

Present: Messrs. H. C. Ayer, D. P. Eells, W. H. Harris, C. A. Otis, P. H. Matthews, Jno. I. Williams, R. J. Wick, & A. W. Jones, Mr. H. C. Ayer presiding.

Mr. Ayer suggested that a committee be appointed to negotiate the bonds amounting to $500,000 authorized by the board at their meeting April 3rd, 1882. After some discussion it was thought best to defer consideration of that matter until the annual meeting Jan. 16th, 1883.

There being no further business to consider, the meeting was therefore adjourned.

(Signed) H. C. AYER, *President.*

(Signed) F. H. MATTHEWS, *Sec'y P. T.*

76 SCHEDULE.

Statement of Judgments and Costs in Cases of Sundry Creditors vs. Brown, Bonnell & Co.

Date.	Judgment creditors.	Judgment.	Original cost.	Increase.
1883.				
Nov. 22	Briar Hill Iron & Coal Co.	10,846 50	3 11	2 32
	Wick Bros. & Co.	28,386 63	4 07	2 48
	Geo. D. Wick	14,774 30	3 67	2 48
	Andrews Hitchcock	21,903 00	3 83	2 48
	First National Bank, Youngstown, Ohio.	51,388 00	5 91	2 48
	Second National Bank, Youngstown, Ohio.	12,796 93	3 75	2 32
	Henry Wick & Co.	11,446 00	3 27	2 48
	Grange Savings & Loan Asso.	11,885 00	3 27	2 48
	Hubbard National Bank	11,663 63	3 19	2 48
	Foster Coal Co.	2,600 00	2 95	2 48
	Chas. S. Worden	17,383 77	3 91	2 48
	W. R. Everett	17,699 00	3 59	2 48
	Lorenzo Lane	5,835 00	2 95	2 48
	Leadville Coal Co.	11,974 45	3 47	2 48
	John J. Williams	18,457 08	3 03	2 48
	Greenville National Bank	9,965 60	3 27	2 32
	Farmers' & Mechanics' National Bank	10,418 24	3 27	2 48
	First National Bank of Mercer, Pa.	5,706 00	2 95	2 32
	Pittsburgh National Bank of Com.	11,237 32	3 27	2 48
	Shenango Coal Co.	19,721 83	4 29	2 48
	Westerman, Files & Co.	1,473 37	3 03	2 48
	Sharon National Bank	105,006 84	7 11	2 32
	A. & W. Powers	649 32	3 03	2 48
	Gerard Savings Bank	15,904 40	3 51	2 48
	Farmers' D. & S. Bank, Poland	5,783 18	2 95	2 48
	Florence Mining Co.	59,578 75	5 91	2 48
	Carbon Limestone Co.	1,190 70	3 19	2 48
	Imperial Coal Co.	7,456 32	3 59	2 48
	Witch Hazel Mining Co.	1,089 82	3 59	2 48
	Dexter B. Chambers	988 13	2 95	2 48
	Himrod Furnace Co.	14,080 65	3 51	2 48
	Merchants' National Bank	34,017 41	4 71	2 48
	L. C. Jones	17,499 44	3 75	2 48
	Total on judgments of Nov. 22nd	570,806 61	121 95	81 04

77

1883.				
Dec. 10	P. Jacobs & Sons	4,720 00	3 35	
	Sidney Strong	152 00	2 95	
	David Jones	1,108 00	2 95	
	J. H. Outhwaite & Co.	983 00	3 03	
	Hiram Park	5,735 00	3 03	
	First National Bank, Mercer, Pa.	5,330 60	3 19	
	Reid Bros.	5,972 00	3 03	
	National Bank of W. Va.	5,640 00	3 59	
	First National Bank of Bellaire	5,830 00	3 27	
	Park & Westlake	262 74	2 87	
	Lang & Davidson	1,266 50	3 03	
	John A. Vinlon	580 00	3 19	
	American Exchange Nat. Bank	11,137 36	3 59	
	John A. Boyle	530 65	3 11	
	Allegheny Coal Co.	157 70	3 19	

Schedule—Continued.

Date.	Judgment creditors.	Judgment.	Original cost.	Increase.
1883.				
	E. Bell & Sons	1,194 30	3 19	
	Harman Austin	5,997 00	3 19	
	National Bank Fenyette Co.	75,320 00	5 83	
	P. & L. E. R. R. Co.	10,438 00	3 20	2 48
Dec. 15	Martin Quigley	3,485 90	2 95	
	Arthur Conway	1,627 22	2 95	
	Total judgments of Dec. 10 and 15	$147,467 79	68 60	2 48
	Total judgments Nov. 22nd brought over	570,806 61	121 95	81 04
		718,274 40	190 55	83 52

78 And afterwards, to wit, on June 11th, 1884, a master's report was filed in said cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON COMPANY *vs.* BROWN, BONNELL AND COMPANY. } Equity, No. 4195.

At the April term, A. D. 1883, this cause was referred to the undersigned as a special master "to ascertain what is justly due from said defendant to each and every creditor who has filed his claim in accordance with the order of this court and to adjudge and marshal the liens of said creditors and the priorities thereof and to report his findings and adjudications to the court," &c. In accordance with this order I caused in each case, in which the receiver made any contest as to the amount due upon the petition of the creditor, proper pleadings to be filed, and upon the issues so made I have heard such testimony as the parties produced and made in every such case a special report as to the amount allowed with reasons for such findings. I have made special reports of this character in the following cases, viz:

The Florence Mining Company, claim No. 84.
Henry O. Bonnell *et al.*, claim No. 131.
Job Evans, claim No. 164.
The Iron Cliffs Company, claim No. 170.

And I hereby make special reference to the reports made in those cases and ask that the same be considered as a part of
79 this my general report. In very many other claims, after comparing the proofs filed by the petitioners with the books

of the defendant and records on file in its office, I was enabled to reach a conclusion satisfactory to the creditors, to the receiver representing the defendant, and to me, and in such cases I have not filed any special report, but made a finding of the amount on the schedule hereinafter referred to.

In the claims of the following petitioning creditors, viz:

W. R. Erret, No. 71;
The Pittsburgh and Lake Erie R. R. Co., No. 92;
The Citizen's National Bank of Pittsburgh, Pa., No. 114;
The Imperial Coal Company, No. 122;
The Pittsburgh Steel Casting Company, No. 149,

liens are claimed by attachment proceedings instituted and still pending in the courts of the United States and of the State of Pennsylvania in the latter State. As the result of such proceedings has not been proved and the validity of said liens established I am not able to report any priority as existing in favor of said creditors.

In the claims of the following creditors, viz:

Commercial National Bank of Cleveland, No. 90;
Daniel P. Eells, No. 95;
William H. Harris, No. 96;
Charles A. Otis, No. 155;
Amasa Stone's estate, No. 157,

they claim to hold as collateral security bonds secured by a first mortgage upon all the property of the defendants. The validity of this mortgage is contested by other creditors, and upon the
80 issues so made, by an order of your honors, I was required to pass upon the questions so made, but by consent of all parties, pending negotiations amongst the creditors for a settlement of all these matters, I have, by such consent of all parties, suspended further hearing as to the validity of said mortgage, and in the schedule hereinafter referred to I have noted their claims as to liens without passing upon them.

In the following cases I have reported preferred claims, viz:

No. 67, Wilcox & Scaife, for $232.39.
No. 123, Charles L. Mackey, $14.60.
No. 124, James Mackey, $311.50.

As to all other claims, the amount claimed by the creditor with the amount allowed by me, the nature of the claim, the number thereof, and the residence of the petitioners *is* fully set forth in a schedule, "A," which is submitted herewith as a part of this report, and to which reference is made for full information as to each claim so filed. From said schedule it appears that the total claims filed by petitioning creditors number one hundred and seventy-seven; amount to the sum of $1,309,903.48.

The amount reported due by me upon said claims is	$1,235,819 40
The amount of interest on same to June 1st, 1884, allowed is	84,830 52
Total amount of principal and interest allowed	$1,320,649 92

Said schedule and the several special reports made by me as aforesaid, together with all the evidence taken in connection therewith, are respectfully submitted herewith for the examination of the court and its further orders herein.

A. J. RICKS,
Special Master.

[Endorsed:] No. 4195. United States circuit court, northern district of Ohio, eastern division. The Lake Superior Iron Company *vs.* Brown, Bonnell and Company. Original report. Filed June 11, 1884. A. J. Ricks, clerk.

81 EXHIBIT A.

Filed June 11th, 1884. *Schedule of Creditors of Brown, Bonnell*

No. of claim.	When filed.	Name of petitioning creditor.	Residence of creditor.	Nature of claim.
1	May 9	Upson, Walton & Co.	Cleveland, Ohio	Account
2	" 10	Wm. Tod & Co.	Young-town, Ohio	do.
3	" "	Niagara Refining Co.	Buffalo, N. Y.	do.
4	" "	Carbon Limestone Co.	Youngstown, Ohio	Account and note
5	" "	Moravia Limestone Co.	" "	Account
6	" "	Greenville National Bank	Greenville, Penna.	Liable as indorsers on Ayer's notes.
7	" 11	McVay & Walker	Braddocks, Penna.	Account
8	" "	B. F. Parsons	Johnsonville, Ohio	do.
9	" "	Sharon National Bank	Sharon, Penna.	
10	" "	H. C. Frick Coke Co.	Pittsburgh, Penna.	Account
11	" "	B. F. Goodrich Co.	Akron, Ohio	do.
12	" "	Cleveland Malleable Iron Co.	Cleveland, Ohio	do.
13	" "	Girard Savings Bank	Girard, Ohio	Liable as indorsers on Ayer's notes.
14	" "	Otis Iron & Steel Co.	Cleveland, Ohio	Account
15	" "	Taylor Iron Company	" "	Notes
16	" "	Merchants' National Bank	Meadville, Penna.	do.
17	" "	A. D. Truesdell	Warren, Ohio	Account
18	" "	Brush Electric Co.	Cleveland, Ohio	do.
19	" 12	John Carlin & Co.	Pittsburgh, Penna.	Note
20	" "	Robinson, Rea & Co.	" "	Account
21	" "	Cameron, Amberg & Co.	Chicago, Ill.	do.
22	" "	Westerman, Filer & Co.	Sharon, Penna.	Account and note
23	" "	Pendleton, Brother & Co.	Rochester, Penna.	Account
24	" "	*[Monongahela National Bank.	Brownsville, Penna.]	
25	" "	Leadville Coal Co.	Youngstown, Ohio	Account and notes
26	" "	N. Y., P. & O. R. R. Co.		Account for freight
27	" "	Samuel Osborn & Co.	Boston, Mass.	Account
28	May 12	Edward H. Kellogg	New York, N. Y.	Account
29	" "	Allegheny Coal Co.	Youngstown, Ohio	do.
30	" "	Chalmers Spence Co.	New York, N. Y.	do.
31	" "	Alberta Coal Co.	New Lisbon, Ohio	do.
32	" 14	S. Obermayer & Co.	Cincinnati, "	do.
33	" "	A. Garrison & Co.	Pittsburgh, Penna.	do.
34	" "	William Liggitt	Lowellville, Ohio	Labor and material
35	" "	Joseph C. Brenneman	Young-town, Ohio	Account
36	" "	First National Bank	Garrettsville, Ohio	Liable as indorsers on Ayer's notes.
37	" 15	John B. Vinton	Youngstown, Ohio	Account
38	" "	Shenango Coal Co.	" "	
39	" "	Short & Forman	Cleveland, "	Account
40	" 16	Woods, Perry & Co.	" "	do.
41	" "	W. H. Rickey	Cincinnati, "	do.
42	" "	Sharon Coal Co.	Sharon, Penna.	do.
43	" "	P. Jacobs & Sons	Youngstown, Ohio	do.
44	" "	Erskine & Co.	" "	do.
45	" "	Lowell Limestone Co.	Lowellville, Ohio	do.
46	" 17	Adams & Westlake M'f'g Co	Chicago, Ill.	do.
47	" "	Briar Hill Stone Co.	Briar Hill, Ohio	do.

* Words and figures enclosed in

Sheet 1.

& Co.—Exhibit to Special Master's Report.

Amount claimed.	Amount reported due by the master.			Order in which creditors shall be paid.	Remarks.
	Principal.	Interest.	Total.		
40 32	40 32	3 13	43 45	Pro rata.	
184 16	184 16	12 71	196 87	do.	
99 66	99 66	7 60	107 26	do.	
1,271 40	850 73 280 17	57 99 21 01	908 72 301 18	do.	Note overlooked on original calculation.
			$1,209 90		
33 63	33 63	2 46	36 09	do.	
9,705 35	9,710 51	673 98	10,384 49	do.	
27 39	27 39	2 07	29 46	do.	
29 50	29 50	2 29	31 79	do.	
101,575 31	101,381 31	6,976 69	108,358 00	do.	
728 25	728 25	56 43	784 68	do.	
16 81	16 81	1 24	18 05	do.	
32 50	32 50	2 40	34 90	do.	
5,419 86	5,419 86	390 23	5,810 09	do.	
1,341 13	1,341 13	140 81	1,481 94	do.	
11,958 96	11,958 96	853 07	12,812 03	do.	
32,718 28	32,718 27	2,326 43	35,044 70	do.	
11 90	11 90	82	12 72	do.	
475 63	475 63	42 80	518 43	do.	
571 06	572 46	42 34	614 80	do.	
204 15	204 15	12 75	216 90	do.	
4 20	4 20	30	4 50	do.	
1,412 25	1,412 28	94 62	1,506 90	do.	
523 23	523 23	40 37	563 60	do.	
*[33,005 44]				do.	A duplicate claim filed and adopted as original. See No. 175.
11,614 81	11,613 81	763 11	12,376 92	do.	
3,561 23	3,509 06	269 58	3,778 64	do.	
127 64	127 64	10 14	137 78	do.	
723 35	723 35	58 70	782 05	do.	
150 20	150 20	12 00	162 20	do.	
189 51	189 51	15 91	205 42	do.	
247 80	247 80	18 59	266 39	do.	
86 58	86 58	7 01	93 59	do.	
196 92	196 92	16 25	213 17	do.	
35 60	35 60	2 31	37 91	do.	
505 38	505 38	37 89	543 27	do.	Claim assigned to J. D. Boyle & Co., Pittsburgh, Pa.
5,761 50	5,761 50	440 74	6,202 24	do.	
552 90	552 90	41 46	594 36	do.	
19,057 39	19,057 39	1,296 21	20,353 60	do.	
39 03	39 03	2 92	41 95	do.	
596 46	596 46	49 39	645 85	do.	
21 60	21 60	1 57	23 17	do.	
297 44	297 44	23 03	320 48	do.	
4,510 75	4,510 75	338 30	4,849 05	do.	
5,946 88	2,645 71	38	2,711 85	do.	Withdrawn & cancelled Nov. 12, '85. See letter filed with claim.
2,206 64	2,206 64	156 30	2,362 94	do.	
44 50	44 50	3 61	48 11	do.	
21 90	21 90	1 80	23 70	do.	
224,880 94	221,198 68	15,331 75	236,530 43		

brackets erased in original.

82 EXHIBIT A.

Filed June 11th, 1884. *Schedule of Creditors of Brown, Bonnell*

No. of claim.	When filed.	Name of petitioning creditor.	Residence of creditor.	Nature of claim.
48	May 17	Rossie Iron Works	New York, N. Y.	Note and account.
49	" "	Martin Quigley	Erie, Penna	Account
50	" "	Joseph H. Davis	Sewickley, Penna	do.
51	" "	A. Armstrong	Warren, Ohio.	do.
52	" "	David Jones	Youngstown, Ohio	For labor performed.
53	" 18	Second National Bank	" "	
54	" "	First National Bank	" "	Liable as indorser on 9 notes of Ayers & Sons.
55	" "	William Cornelius, treas.	" "	
56	" "	Park, Brother & Co.	Pittsburgh, Penna.	Account
57	" "	Standard Oil Co.	Youngstown, Ohio	do.
58	" "	Atwood & McCaffrey	Pittsburgh, Penna.	do.
59	" 21	R. L. Walker	Poland, Ohio	Indorser on two notes of Ayres & Sons.
60	" "	Edwin Bell & Sons.	Youngstown, Ohio	Account
61	" "	Youngstown City Water Works.	" "	do.
62	" 23	Foster Coal Co.	" "	Note
63	" "	Andrews & Hitchcock	" "	Note and account
64	" "	John Cannon	Coaltown, Penna.	Account
65	" "	J. H. Outhwaite & Co.	Cleveland, Ohio	do.
66	" 24	Nelson P. Reed & Co.	Pittsburgh, Penna	do.
67	" "	Wilcox & Scaipe	" "	Repairs on mills
68	" "	Milliken, Boyd & Co.	Youngstown, Ohio	Account
69	" 25	Electrical Supply Co.	Ansonia, Conn.	do.
70	" "	United Pipe Lines.	Oil City, Penna.	do.
71	" "	W. R. Errett	Allegheny City, Penna.	Liable as indorser on Ayer's notes.
72	" "	Himrod Furnace Co.	Youngstown, Ohio	Note
73	" "	Lawrence Ore Co.	" "	Note
74	May 26	Geo. D. Wick	Cleveland, "	Liable as indorser on Ayer's notes.
75	May 26	Chess Stoner	North Hope, Penna.	Account
76	" "	H. L. & E. A. Schwartzenberg	Cleveland, Ohio	do.
77	" "	Brooks Oil Co.	" "	do.
78	" "	John S. Williams	Youngstown, Ohio	For services as gen'l man'g'r & money loaned.
79	" 28	Hartley & Marshall	Pittsburgh, Penna.	Account
80	" "	Crocker Brothers	New York, N. Y.	do.
81	" "	Phillips, Stewart & Co	Mercer, Penna.	do.
82	" 29	Menomonee Mining Co.	Milwaukee, Wis.	do.
83	" "	B. F. Rafferty	Pittsburgh, Penna	do.
84	" "	Florence Mining Co.	Milwaukee, Wis.	Contract for iron ore & claims for breach thereof.
85	" "	Witch Hazel Mining Co.	Youngstown, Ohio	Account
86	" "	Park & Westlake	" "	do.
87	" "	First National Bank	Mercer, Penna	Indorsers on Ayer's notes.
88	" "	Mayer & Lowenstein.	New York, N. Y.	Account
89	" 30	McMillan Oil Co.	Cleveland, Ohio	do.
90	" "	Commercial National Bank.	" "	Indorsers on eleven of Ayer's notes.
91	" 31	American Nail Mch. Co.	Ashtabula, "	Account
92	June 1	Pittsburgh & L. E. R. R. Co.		Account for freight.
93	" "	Lorenzo Lane	Youngstown, Ohio	Indorsers on Ayers' notes.
94	" 2	Mackintosh, Hemphill & Co.	Pittsburgh, Penna.	Account

Sheet 2.

& Co.—Exhibit to Special Master's Report.

Amount claimed.	Amount reported due by the master.			Order in which creditors shall be paid.	Remarks.
	Principal.	Interest.	Total.		
224,880 94	221,198 68	15,331 75	236,530 43		
8,433 43	8,433 43	653 62	9,087 05	Pro rata.	
3,319 91	3,319 91	266 14	3,586 05	do.	
20 16	20 16	1 61	21 77	do.	
6 60	6 60	50	7 10	do.	
1,020 25	1,020 25	117 32	1,137 57	do.	
15,262 26	14,740 89	972 99	15,713 88	do.	(See supplemental report.)
49,754 05	49,754 05	3,154 51	52,908 56	do.	
4,551 93	.....	.....	.....	do.	Paid in full.
138 96	138 96	10 07	149 03	do.	
359 04	352 82	29 99	382 81	do.	
8 55	8 55	68	9 23	do.	
9,955 75	9,955 75	663 31	10,619 06	do.	
1,137 51	1,137 51	85 31	1,222 82	do.	
47 52	47 52	3 51	51 03	do.	
2,467 87	2,467 87	180 57	2,648 44	do.	
20,306 02	20,306 02	1,520 23	21,826 25	do.	
187 49	137 49	10 56	148 05	do.	
940 09	940 09	64 65	1,004 74	do.	
9 60	3 60	37	3 97	do.	
216 27	216 27	16 12	232 39	First lien..	Mechanics' lien claimed to date from Feb. 6, 1883.
213 50	213 50	20 19	233 69	Pro rata.	
364 15	364 15	28 22	392 37	do.	
318 84	318 84	35 55	354 39	do.	
16,952 46	16,952 46	1,289 64	18,242 10	do.	Lien claimed by attachment and suit still pending in U. S. circuit c't, W. dist. Penna.
9,826 94	9,826 94	741 93	10,568 87	do.	
4,238 02	4,238 02	321 70	4,559 72	do.	
14,256 50	14,256 50	976 36	15,232 86	do.	
116 45	116 45	9 01	125 46	do.	
164 40	164 40	13 15	177 55	do.	
44 55	44 55	3 56	48 11	do.	
17,683 81	17,683 81	2,127 95	19,811 76	do.	
3,200 29	3,200 29	256 02	3,456 31	do.	
195 87	195 87	16 36	212 23		
58 30	58 30	4 52	62 82	do.	
2,849 92	2,849 92	171 96	3,102 88	do.	
181 52	181 52	15 73	197 25	do.	
69,751 41	58,203 91	3,511 09	61,715 00	do.	Master's report filed & excepted to, but not acted on.
1,039 90	1,039 90	72 79	1,112 69	do.	
262 74	262 74	21 02	283 76	do.	
10,650 10	10,650 10	716 27	11,366 37	do.	
81 25	81 25	4 00	85 25	do.	Held as collateral security 30 bonds of $5,000 each, secured by 1st mortgage on all of def'ts' property. Validity of lien not yet passed upon.
379 32	379 32	31 17	410 49	do.	
60,102 94	60,102 94	3,617 94	63,720 88	do.	
11 52	11 52	86	12 38	do.	
22,855 99	10,233 51	1,158 59	11,392 10	do.	Lien claimed by attachm't in com. pleas courts of Allegheny & Fayette Co's, Penna., but lien disputed and suit still pending. Since filing this report the P. & L. E. R. Co. has filed a written statement admitting a credit on its original claim of $5,479.10, paid Jan. 19th, 1884, which would leave the amount due it June 1st, 1884, $5,929.55. See papers filed with petition. (See supplemental report.)
5,511 26	5,511 26	415 89	5,927 15	do.	
385 60	385 60	40 55	426 15		
584,721 75	551,733 99	38,705 83	590,439 82		

88 EXHIBIT A.

Filed June 11th, 1884. *Schedule of Creditors of Brown, Bonnell*

No. of claim.	When filed.	Name of petitioning creditor.	Residence of creditor.	Nature of claim.
95	June 4	Dan. P. Eells	Cleveland, Ohio	For amount paid by him as accommodation indorser for defendants.
96	" "	Wm. H. Harris	" "	For amount paid by him as accommodation indorser for def'ts.
97	" "	Henry Wick & Co	" "	Indorser on Ayer's notes.
98	" "	J. Park Alexander	Akron, "	Account
99	" "	Wick Bros. & Co	Youngstown,"	Indorser on four notes of Ayers & Sons and makers on one note.
100	" 6	Manuf'rs' & Traders' Bank	Buffalo, N. Y.	Judgment at law
101	" "	Pratt & Co	" "	Balance on account and as indorsers on Ayers & Sons' notes.
102	" 7	The Pennsylvania Co		Indorsers and makers of notes and freight.
103	" "	A. & W. Powers	Youngstown, Ohio	On contract for coal royalties.
104	" 8	Hiram Park	" "	Note
105	" "	G. Kane	Pittsburgh, Penna	Account
106	" "	National Bank of W. Virginia.	Wheeling, W. Va.	Indorsers on Ayer's notes.
107	" 9	C. H. Roberts	Pittsburgh, Penna	Account
108	" "	Totten & Co	" "	do.
109	" "	Dunbar Coke Co	" "	do.
110	" 12	Struthers Iron Co	Struthers, Ohio	Notes
111	" "	National Bank of Fayette Co.	Uniontown, Penna	Indorsers on 13 Ayer's notes.
112	" 13	Port Royal Coal & Coke Co.	Youngstown, Ohio	Account
113	" 14	Citizen's National Bank	Pittsburgh, Penna	Indorsers on 14 notes of Ayers & Sons.
114	" "	Second National Bank	Ravenna, Ohio	Indorsers on 6 notes of Ayers & Sons.
115	" "	Niagara Refining Co	Buffalo, N. Y.	
116	" 15	Geauga Savings & Loan Asso't'n.	Chardon, Ohio	Liable as indorsers on 2 notes of Ayers & S.
117	" "	Ashcroft Man'f'g Co	New York, N. Y	Account
118	" 16	Savage Fire Brick Co	New Cumberland, W. Va	do.
119	" "	D. B. Chambers	Youngstown, Ohio	For services rendered
120	June 16	Importers' & Traders' Nat'l Bank.	New York, N. Y.	
121	" 18	Imperial Coal Co	Pittsburgh, Penna	Account and notes
122	" "	W. F. Sanford	Dunbar, Penna	Money loaned and services rendered.
123	" "	Chas. L. Mackey	Youngstown, Ohio	Services rendered
124	" "	James Mackey	" "	Services rendered
125	" 19	Arthur Conway	Erie, Penna	Account
126	" 20	Phœnix Fire Brick Works.	Pittsburgh, Penna	do.
127	" 21	H. Loomis & Co	" "	Commissions on sales of iron, &c.
128	" "	Hubbard National Bank	Hubbard, Ohio	Notes
129	" "	Jackson Iron Co	Cleveland, "	On contract for ore sold
130	" "	Lake Superior Iron Co.		On contract for ore sold
131	" "	Henry O. Bonnell and others.	Youngstown, Ohio	On contract for use nail machines.
132	" 22	William B. Conway	Warren, Ohio	For royalty on links and pins.
133	" "	American Manufacturer	Pittsburgh, Penna	Account
134	" "	Warren Iddings	Warren, Ohio	For royalty on links and pins.
135	" "	Republic Iron Co	Cleveland, Ohio	Contract
136	" "	Clarence Walker	Butler, Penna	Professional services rendered.
137	" 23	Cartright, McCurdy & Co	Youngstown, Ohio	Account
138	" "	First National Bank	Bellaire, Ohio	Notes
139	" 25	Goeppinger & Roach	Youngstown, Ohio	Account
140	" "	Stambaugh, Thompson & Co.	" "	do.
141	" "	Morris Hardware Co	" "	do.

Sheet 3.

& Co.—Exhibit to Special Master's Report.

Amount claimed.	Amount reported due by the master.			Order in which creditors shall be paid.	Remarks.
	Principal.	Interest.	Total.		
584,721 75	551,733 99	38,705 83	590,439 82		Held as collateral security 16 bonds of $5,000 each, secured by 1st mortgage on all def'ts' property. Validity of lien not yet passed upon.
37,499 66	37,499 66	2,529 50	40,052 44	Pro rata.....	
37,499 68	37,499 68	2,529 50	40,029 18	do.	Same as opp. claim 95, above.
11,004 31	11,004 31	786 47	11,790 78		
124 40	124 40	9 33	133 73	do.	
27,250 25	27,192 92	2,015 59	29,208 51	do.	
9,973 78	9,973 78	694 85	10,668 63	do.	
541 40	454 48	120 13	574 61	do.	
20,954 65	19,389 33	1,383 64	20,772 97	do.	
947 08	947 08	72 61	1,019 69	do.	Lien claimed on 200 shares Mahoning Coal Co. stock.
5,487 64	5,487 64	406 80	5,894 44		
455 48	455 48	38 72	494 20	do.	
5,417 63	5,417 63	410 84	5,828 47	do.	
228 99	228 99	19 46	248 45	do.	
608 36	608 36	84 97	693 33	do.	
182 68	182 68	13 28	195 96	do.	
21,000 50	.....	.....	.....	Paid in full.....	Claims as security and that he holds contract for title to Struthers' furnace, at Struthers, O.
72,547 49	72,584 92	4,840 03	77,424 95	Pro rata	See supplemental report, filed Jan. 13th, 1885.
109 10	109 10	8 18	117 28	do.	
68,854 25	68,854 25	4,922 34	73,776 59	Less 3,745.81, = $70,030.78; less int. from Nov. 7th, '83, 127.35: 69,903.43	Lien claimed by attachment suit in U. S. circuit court, W. dist. Penna., but lien disputed and suit undetermined. Since filing this report petitioner admits a credit of $3,745.81 on this claim. See petition.
33,495 79	33,495 79	2,211 87	35,707 66	do.	
99 66	.....	.....	.....	Void. See claim No. 3.	
11,383 38	11,383 38	868 90	12,252 28	do.	
5 00	5 00	40	5 40	do.	
148 24	148 24	11 12	159 36	do.	
898 33	898 33	63 78	962 11	do.	
63,000 00	47,000 00	3,175 22	50,175 22	do.....	Claim to hold as collateral security 2,059 shares of the capital stock of Brown, Bonnell & Co.
7,182 94	7,182 94	513 70	7,696 64	do.....	Lien by attachment claimed in suit pending in U. S. circuit c't, W. dist. Pa.
735 35	735 35	55 15	790 50	do.	
33 56	33 56	2 67	36 23	Preferred....	Preferred claim to extent of $19.87 for services rendered within six months.
187 62	292 12	19 38	311 50	Preferred.	
1,452 75	1,452 75	104 84	1,557 59	Pro rata.....	Preferred claim to extent of $104.50 for services rendered.
551 05	551 05	38 57	589 62	do.	
1,205 05	1,205 05	162 43	1,397 48	do.	
11,150 70	11,150 70	857 70	12,008 40	do.	
10,944 26	10,944 26	1,125 43	12,069 69	do.	
12,038 92	12,038 92	1,113 60	13,152 52	do.	
1,794 80	1,004 76	30 14	1,134 90	do.	
111 00	111 00	7 95	118 95	do.	
50 00	50 00	3 74	53 74	do.	
111 00	111 00	7 95	118 95	do.	
40,285 25	40,285 25	779 00	41,064 25	do.	
150 96	150 00	11 25	161 25	do.	Assigned to Fayette Brown, receiver, after the filing of this report & by him cancelled. See ass'n filed.
90 93	90 93	6 97	97 90	do.	
5,656 87	5,656 87	342 10	5,998 97	do.	
16 13	16 13	1 23	17 36	do.	
6 70	6 70	51	7 21	do.	
31 17	31 17	2 38	33 55	do.	
1,108,405 72	1,035,760 06	71,077 57	1,106,830 63		

Paid. See receipt filed with claims Feb'y 12th, 1887.

84 EXHIBIT A.

Filed June 11th, 1884. *Schedule of Creditors of Brown, Bonnell*

No. of claim.	When filed.	Name of petitioning creditor.	Residence of creditor.	Nature of claim.
142	June 25	J. H. Bushnell	Youngstown, Ohio	Account
143	" "	A. B. Brownlee & Co	" "	do.
144	" "	Nicholas Frech	" "	do.
145	" "	Ellis Planing Mill Co	" "	do.
146	" "	Wick C. Gans	" "	do.
147	" "	Geo. H. Dingledy	" "	do.
148	" 26	Robert Hunter & Co	Pittsburgh, Penna	do.
149	" 27	Pittsburgh Steel Casting Co.	Pittsburgh, Penna	do.
150	" "	Cleveland Rolling Mill Co	Cleveland, Ohio	do.
151	" 29	Dillinger & Co	West Bethany, Pa	do.
152	" 30	Laing & Davison	Pittsburgh, Penna	do.
153	" "	L. S. & M. S. R. R. Co		Account for freight
154	July 2	Wheatland Bessemer Steel Co.	Pittsburgh, Penna	Account
155	" 9	Chas. A. Otis	Cleveland, Ohio	Notes
156	" 10	Alexander & Co	Allegheny City, Pa	Account
157	" "	Amasa Stone	Cleveland, Ohio	Notes
158	" 19	Briar Hill Iron & Coal Co	Youngstown, Ohio	
159	" "	Manning, McKeown & Co	" "	Account
160	" 20	Kirk, Christy & Co	Warren, Ohio	do.
161	" 21	Jarrecki M'f'g Co., Limited	Erie, Penna	do.
162	" 23	Reid Bros	Dunbar, Penna	do.
163	" "	E. W. Powers & Co	Youngstown, Ohio	do.
164	" 26	Job Evans	" "	Labor perfor ned
165	" 28	Farmers' & Mechanics' Nat'l B'k.	Mercer, Penna	Notes
166	" 31	Farmers' Deposit & Savings B'k.	Poland, Ohio	Liable as indorsers on notes of Ayer's Sons.
167	" "	Shenango Machine Co., Limited.	Sharon, Penna	Account
168	Aug. 1	American Exchange Nat'l Bank.	New York, N. Y	Liable as indorsers on Ayer's notes.
169	" "	Pittsburgh Nat'l Bank of Commerce.	Pittsburgh, Penna	Liable as indorsers on Ayer's notes.
170	" 8	Iron Cliffs Company	Negaunee, Mich	Contract for iron ore
171	" "	Third National Bank	New York, N. Y	Note
172	" 14	First National Bank	Warren, Ohio	Liable as indorser on Ayer's notes.
173	Sept. 3	John Geddes	Liberty, Ohio	Account
174	" 6	Sidney Strong	Youngstown, Ohio	Professional services.
175	" "	Monongahela National Bank.	Brownsville, Penna	Liable as indorsers on Ayer's notes.
176	Oct. 20 1884.	Webb, Hart & Co	Boston, Mass	Note
177	Feb. 21	Lloyd G. Reed, assignee	Erie, Penna	Account

Sheet 4.

& Co.—Exhibit to Special Master's Report.

Amount claimed.	Amount reported due by the master.			Order in which creditors shall be paid.	Remarks.
	Principal.	Interest.	Total.		
1,108,405 72	1,035,760 06	71,071 57	1,106,831 63		
1 90	1 90	14	2 04	Pro rata.	
6 00	6 00	46	6 46	do.	
76 05	76 05	5 79	81 84	do.	
37 32	37 32	2 84	40 16	do.	
17 70	17 70	1 35	19 05	do.	
12 59	12 59	98	13 57	do.	
50 00	50 00	4 00	54 00	do.	
46 84	46 84	3 51	50 35	do.	Lien claimed by attachment in common pleas court of Allegheny county, Penna. Suit still pending.
555 35	555 35	44 35	599 70	do.	
25 73	25 73	3 16	28 89	do.	
1,196 68	1,196 68	87 96	1,284 64	do.	
571 87	571 87	42 88	614 75	do.	
180 00	180 00	15 30	195 30	do.	
50,000 00	50,000 00	3,208 33	53,208 33	do.	Holds as collateral security $80,000 of 1st-mortgage bonds on property of defendants. Validity of lien not yet passed upon.
257 80	257 80	20 62	278 42	do.	
37,499 66	37,499 66	2,549 61	40,049 27	do.	
10,500 00	10,492 62	713 86	11,206 48	do.	Same remarks as opposite claim No. 155.
27 15	27 15	2 03	29 18	do.	
139 94	139 94	10 50	150 44	do.	
17 20	17 20	1 29	18 49	do.	
5,699 71	5,699 71	427 48	6,127 19	do.	
8 32	8 32	58	8 90	do.	
279 75	279 75	19 58	299 33	do.	
11,017 64	11,017 64	793 94	11,811 58	do.	
5,642 13	5,642 13	320 58	5,962 71	do.	
20 48	20 48	1 64	22 12	do.	
10,620 44	10,605 71	813 32	11,419 03	do.	
10,932 81	10,932 81	756 61	11,689 42	do.	
1,236 58	1,275 92	311 78	1,587 70	do.	Master's report filed, but not disposed of.
2,949 76	2,949 76	183 27	3,133 03	do.	
16,836 97	16,836 97	1,178 67	18,015 64	do.	
9 75	9 75	1 03	10 78	do.	
152 50	152 50	18 50	171 00	do.	
33,022 42	33,022 42	2,183 07	35,205 49	do.	
393 07	393 07	29 94	423 01	do.	
1,455 65	.....	.....	.....	do	Claim covered by petition No. 125.
1,309,903 00	1,235,819 40	84,830 52	1,320,649 92		

85 And afterwards, to wit, on Jan'y 13th, 1885, a master's supplemental report was filed in said cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States, Eastern Division, Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY
vs.
BROWN, BONNELL & COMPANY. } Equity, No. 4195.

Supplemental Report of Master.

Since filing my report as master as to the sums due to the various creditors of Brown, Bonnell & Co. certain creditors have admitted certain payments to have been made by their having realized upon certain assets and judicial proceedings since the filing of said report, which I embrace in this report, viz:

I. The Fayette County National Bank of Pennsylvania upon their claim, No. 111, filed herein, have admitted, through their attorney, that on the seventh day of March, A. D. 1884, they received, through C. C. Sterling, sheriff of Fayette county, Pennsylvania, as the proceeds of a sale of property made under judicial proceedings in said county, the sum of twenty-four thousand one hundred and sixty-four and $\frac{59}{100}$ dollars ($24,164.59.) The evidence of such payment having been made has been submitted to me this day (Jan'y 9th, 1885) by Fayette Brown, receiver, and has been filed with the claim above named and numbered. The evidence of the said credit was not sent to said receiver until long after the filing of my re-
86 port, although the credit is dated prior thereto. The amount due and reported in favor of said claimant in my original report, with interest to June 1st, 1884, was $77,424.95.

Upon the sum above named credit of $24,164.59, with interest from March 7th, 1884, should be applied, so that the sum originally reported should be reduced by the sum of $24,502.89, being principal and interest of the credit, which would leave the amount due said bank on June 1st, '84, at $52,922.06.

II. The claim of the Pittsburgh and Lake Erie Railroad Co., No. 92, should be reduced from the amount reported in my general report as due June 1st, 1884, by the sum of $289.91, which the claimant received on the 18th day of November, 1884, by virtue of certain legal proceedings in the court of common pleas of Allegheny county, Pennsylvania, from the Pennsylvania Railroad Co. as garnishee, on a claim due from said company to Brown, Bonnell & Co. The sum reported due on June 1st, 1884, to the claimant was $5,929.55. From this sum should be further deducted the above credit of $289.91, with int. from Nov'r 18th, 1884. See receipt filed with original claim.

III. The Second National Bank of Youngstown, O., claim No. 53, since the filing of my general report has been reduced by a payment thereon of $2,300.00 on November 1st, 1884. Part of the

claim of said bank was a check dated Feb'y 16th, 1883, drawn by Brown, Bonnell & Co. on the Citizens' National Bank of Pittsburgh, Pennsylvania, payable to the order of the Mahoning Coal Co. The said Mahoning Coal Co. paid said check on the day named, viz., Nov'r 1st, 1884, out of that part of its earnings due Brown, Bonnell & Co. as one of the owners of said mine, as duly appears by
87 the receipt of H. M. Garlick, cashier of the Citizens' National Bank aforesaid, and which I have filed with its original claim. The claim allowed was $15,713.88, which should be reduced by said sum of $2,300 and interest.

All of which is respectfully submitted.

A. J. RICKS, *Master*.

(Indorsed:) Supplemental report of master. Filed Jan. 13, 1885. A. J. Ricks, clerk U. S. circuit court.

87½ And afterwards, to wit, on Saturday, October 11th, 1885, an order was made in this cause, which is in the words and figures following, to wit:

THE LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & COMPANY.
} Chancery, No. 4195.

This cause came on to be heard at this term upon the report of A. J. Ricks, Esq., special master, filed in this court on the 11th day of June, 1884, including the schedule filed therewith and made a part thereof, and there being no exceptions filed thereto the court, upon hearing, after argument of counsel, orders that said report, with said schedule as a part thereof, be, and the same is hereby, confirmed; and it is ordered that the amounts of the claims in said report, including said schedule, be, and the same are hereby, fixed and found against said Brown, Bonnell and Company in favor of the persons and corporations and in the amounts therein named, together with interest on the same to the 1st day of June, 1884, being the amounts and interest and persons and corporations found by said special master, the same to be paid as may be hereafter ordered by the court on the further hearing of this cause.

88 And afterwards, to wit, on May 2nd, 1885, the master's report on petition of Commercial National Bank *et al.* was filed, which report is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Ohio.

THE LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & COMPANY.
} Equity, No. 4195.

Report of special master upon the issues made by the intervening petition of the Commercial National Bank of Cleveland, O., Dan. P. Eells, Chas. A. Otis, *et al.* and the response of certain creditors claiming judgment liens.

To the honorable the judges of the circuit court:

By an interlocutory order, made upon the application of certain creditors of Brown, Bonnell & Company, it was directed "that the answer of the Commercial National Bank and others filed herein be considered as an intervening petition praying affirmative relief, and leave is given to one or more creditors to file response to such petition contesting the validity of the mortgage therein set up; and thereupon the master heretofore appointed herein is directed to hear and determine such issues and report the evidence thereon and his conclusions to the court."

Pursuant to the above order I have from time to time heard such evidence as counsel deemed it necessary to offer and have speeded the hearing as fast as the circumstances of the case would permit.

The proceedings were by mutual consent suspended for a
89 long time pending negotiations and arrangements between the creditors for a reorganization of the defendant company and a settlement of its debts; but it was in time developed that it was necessary to have the issues involved in these proceedings brought to a final conclusion, and as soon as I was advised of that fact I proceeded in the hearing with all reasonable diligence.

The facts necessary to be understood to enable the court to pass upon the issues made by the parties to this controversy can be briefly recited.

On the 3rd day of April, A. D. 1882, Brown, Bonnell & Company, after proper corporate legislation by its board of directors, executed an instrument in the nature of a deed in trust, but generally referred to as a mortgage, conveying to Dan. P. Eells and John Hay, as trustees, substantially all of its real property, embracing blast furnaces, rolling mills, nail factories, and valuable machinery, said property to be held in trust to secure the payment of the principal and interest coupons of one hundred bonds of five thousand dollars each, payable at stated periods from April 3rd, 1884, to April 3rd, 1892. Said instrument so authorized was signed by the president and secretary of said corporation April 3rd, 1882, but was not acknowledged by the president until June 16th, 1882, or by the secretary until June 14th, 1882. In due time the bonds authorized to be issued and so secured were signed by the proper corporate officers and delivered to the trustees. A reservation was incorporated in said mortgage by which it was provided that the bonds therein described "shall be certified by the
90 parties of the second part (trustees) according to the form of

certificate above named and until so certified shall not become secured thereby." The bonds so delivered to said trustees were held by them for issue, subject to the order of the defendant corporation. The purpose for which said bonds were so created and executed is stated in said mortgage deed to be as follows: "That whereas the party of the first part, being thereto empowered by law, has, by due action taken, resolved to borrow money in the aggregate five hundred thousand dollars, and to issue therefor its bonds bearing even date herewith, one hundred in number." It appears from the records of the corporation and the evidence of its directors that when said mortgage was authorized the expectation of all its board of directors and officers was to negotiate the sale of said bonds at par, and with the aid of such a surplus fund relieve its officers and directors from the necessity of endorsing individually for the company and of negotiating temporary loans. When the bonds were executed and deposited with the trustees it was for the purpose and in expectation of so negotiating their sale in due course of time as the money might from time to time be needed. Until the bonds were so negotiated they were not issued so that a lien attached to the property pledged for their security, and until so issued it was not deemed advisable or necessary to record the mortgage. While the bonds were so deposited in the hands of the trustees and before sold or negotiated the corporation was unexpectedly and seriously
91 embarrassed and involved in a prolonged controversy with its employees concerning the price of this labor. This controversy or "strike" continued for four months, and from its beginning the company was deprived of most of its revenues. The products of its furnaces and mills, which were in an unfinished condition, could not be sold. Its outstanding liabilities were maturing faster than they could be paid. In this emergency its board of directors held several meetings, and it was finally agreed among those of them largely interested in the company that they would each individually indorse its notes to the extent of $50,000 and each take as collateral security an agreed number of said bonds. In pursuance of said agreement Dan. P. Eells, Amasa Stone, and W. H. Harris each indorsed $50,000 of the notes of the corporation and secured themselves as stated. Later, by agreement of said parties, the first paper endorsed by them having matured, they renewed their indorsement upon condition that Chas. A. Otis, one of their associate directors, should endorse for a similar sum, which was done. Afterwards the Commercial National Bank of Cleveland discounted the notes of John V. Ayers & Sons endorsed by Brown, Bonnell & Company to the amount of $60,102.94 and took thirty of said bonds as collateral security. The bonds so delivered as collateral were transferred to the holders upon written orders given by Brown, Bonnell & Company to the trustee, and said orders were given from time to time when the indorsements of said parties were made and the funds arising from such endorsements were realized by the company.
The testimony shows that said bonds were so delivered by said
92 trustee as follows: On June 19th, 1882, Dan. P. Eells received 20 bonds of $5,000 each to indemnify him for indorsements

to the amount of $50,000. On same day W. H. Harris received 20 bonds of $5,000 each to indemnify him for indorsements to the amount of $50,000. On June 20th, 1882, Amasa Stone received 20 bonds of $5,000 each to secure him for his indorsements of $50,000 of said notes of Brown, Bonnell and Company. On September 23rd, 1882, the Commercial National Bank of Cleveland received 30 bonds of $5,000 each, to be held by it "as collateral security for all loans made by said bank." On December 11th, 1882, Chas. A. Otis received from Dan. P. Eells as trustee four bonds of $5,000 each and four bonds each from Amasa Stone, W. H. Harris, and D. P. Eells to secure him for indorsement to the amount of $50,000 for Brown, Bonnell & Company. By the above surrender of four bonds each of the twenty originally given to them Messrs. Stone, Harris, and Eells still held 16 bonds each, and Mr. Otis likewise held 16 bonds to secure each for his indorsements. In the meantime the strike among the employees of Brown, Bonnell & Company had terminated and its business was proceeding in its usual course. Its resources had been increased by the pledge of these bonds as above recited to the extent of about $250,000. Every dollar realized upon the notes endorsed by the directors named and upon the discounts of said Commercial National Bank had been applied by Brown, Bonnell & Company in its legitimate business. Its directors testify that it was their expectation to be able in a reasonable time to pay the
93 paper which they had endorsed from the revenues of the corporation and retire the bonds so as aforesaid held by them. Relying upon this expectation and regarding the pledging of the bonds in the manner stated as temporary use of them, they agreed not to place the mortgage securing said bonds upon record. The withholding of it from record was with the approval of all the board including, John V. Ayer, whose representative is now the chief complainant against its validity. The mortgage during all this time was in the possession and custody of D. P. Eells, one of the trustees, and with the consent of the holders of the bonds aforesaid was withheld from public record.

Most of the manufactured product of the corporation was sent to John V. Ayers & Sons, of Chicago, Ill., for sale on commission. John V. Ayers was president of Brown, Bonnell & Company, one of its board of directors, and its largest stockholder. He was supposed to be a man of great wealth and enjoyed good credit. The firm paid Brown, Bonnell & Company for its products in notes, and these notes endorsed by the corporation, when discounted, were its chief source of revenue.

On February 16th, 1883, John V. Ayers sent from Chicago a night telegram to Dan. P. Eells, at Cleveland, as follows: "I think you had best record mortgage on receipt of this; will see you Monday." That telegram was delivered to Mr. Eells' representatives on the morning of the 17, and, after consultation be-
94 tween the parties in interest, the mortgage was taken to Youngstown by special messenger and filed for record at 2.35 p. m. that day. On the same day a large amount of the paper of John V. Ayers & Sons went to protest in Chicago and their failure

was publicly announced. Three days later, upon proceedings instituted in this court, a receiver was appointed for Brown, Bonnell & Company, who took possession of all its property.

The respondents to the intervening petition of the Commercial National Bank contend that the mortgage hereinbefore described is invalid, and that the bonds issued thereunder and now held by the parties above named are not liens upon the property of Brown, Bonnell & Company; that the mortgage was a fraudulent contrivance on the part of the creditors of the grantor to secure themselves as creditors, and that it was withheld from record for fraudulent purposes, and as against creditors of the corporation cannot be enforced.

The evidence clearly shows that the original purpose of the directors of said corporation in authorizing said mortgage was to sell the bonds at par in open market and use the funds realized from such sale as their working capital. That purpose is clearly expressed in the very instrument itself, as I have already shown. There was, therefore, nothing concealed or fraudulently intended in the corporate legislation authorizing the mortgage or by the execution thereof. The corporation had the power to authorize and execute the mortgage. The bonds were, therefore, validly created and executed. If there was any fraud it was in their issue and
95 use. They did not become a lien upon the grantor's property until they were issued and either pledged or sold. In he emergency I have referred to they were hypothecated to certain directors to secure them as endorsers upon the notes of their corporation. Said directors were no more bound to loan their credit to the corporation than any other stockholder. They had the same right to ask indemnity when they risked their personal credit for the corporation that any other endorser would have. In hypothecating said bonds to secure said creditors the corporation was not giving them a preference for pre-existing debts over other creditors. It was simply offering indemnity against a contingent liability. It was encumbering its property, but it was realizing in money a reasonable equivalent. It was increasing its cash revenues from the proceeds of said endorsements about $250,000. That money was applied in its business to the payment of debts, to the purchase of supplies, and to the operating of its mills. In none of these respects was the transaction fraudulent or invalid. At the time these bonds were pledged the corporation was solvent. The board of directors believed, and had reasonable grounds for such belief, that it would continue solvent and be able to pay the notes to secure the payment of which the bonds were pledged. They testify that they expected these bonds to be withdrawn from the pledgees, and when so withdrawn they would no longer be a lien upon the property of the mortgagor. There is nothing in the evidence that warrants the conclusion that such expectation was
96 not sincere or well founded in the circumstances surrounding the transaction. Under such expectations and with such purposes controlling them there was nothing fraudulent in the act of withholding that mortgage from record. There was no collusion

or purpose to defraud any one by the failure to record. The mortgaged property was worth very much more than the amount for which the bonds were pledged, and to which extent only they became liens. The failure of Jonn V. Ayers & Son was unexpected and explains the haste with which the mortgage was recorded. It would not be a fair conclusion, from the evidence before me, to say that said failure was anticipated or that said mortgage was kept from record for the purpose of creating a fictitious credit in expectation thereof. Neither would it be fair to conclude from the evidence that the failure to record or that the circumstances connected with the recording are inconsistent with the statements of the holders of said bonds as to the reasons which induced them to act as they did. The most serious objection that can be urged to the validity of the mortgage is that it did not in fact take effect as a mortgage under the laws of Ohio until filed in the proper office, and that on that day the mortgagor was insolvent, the pledgees knew it was insolvent, and that they were taking an unlawful preference. But, conceding the insolvency of the corporation on that day, it is still claimed by the pledgees that they believed it solvent, and that they did not know the full meaning of Ayer's telegram. The evidence shows that they did not know of his failure, except as they may
97 have surmised it from the telegram. But, conceding this, the fact remains that when they incurred their contingent liability as endorsers they, in good faith, took these bonds from a solvent debtor for a valid purpose and withheld it from record in the interest of the mortgagor. They are therefore entitled, in my opinion, to the protection the law gives to mortgagees and pledgees who, acting in good faith, accept such security under such circumstances.

In all the cases cited by counsel for the contesting creditors the mortgages declared fraudulent and void were given to secure pre-existing debts under circumstances of bad faith and collusion between mortgagor and mortgagee. The law does not restrain an honest debtor, embarrassed and pressed with importunate creditors, from making every legitimate effort to relieve himself. He dare pledge his property to secure means with which to pay debts or prosecute his business so long as it is done in good faith. To deny him such a right and privilege would be in effect to place him at the mercy of grasping and unfeeling creditors the moment he became embarrassed.

In the case under consideration the directors who loaned their personal credit to their corporation did it under circumstances that indicate good faith, and the pledges they received for their security, authorized and created for a valid purpose, were legally given by a solvent debtor, and the money realized by the pledges made was honestly and discreetly applied by the debtor to proper uses in its business. I am therefore of the opinion, and so report, that
98 said mortgage is valid and in full force, and the bonds now held by said parties in pledge are a valid lien of equal rank upon the property of the defendant to the amount of the notes and interest to secure which they were pledged.

In a former report made by me in this case, in which the sums due each creditor of Brown, Bonnell & Company and the liens claimed by them were fully set forth, and which report has been confirmed, I reported the sums due the parties holding these bonds to be as follows:

The Commercial National Bank of Cleveland, Ohio, the sum of $63,720.88.

Dan. P. Eells, $40,052.44.

W. H. Harris, $40,029.18.

Charles A. Otis, $53,208.33.

John Hay and Samuel Mather, as executors of the estate of Amasa Stone, $40,049.27.

I therefore report that the thirty bonds held in pledge by the Commercial National Bank of Cleveland are a lien upon the property of Brown, Bonnell & Company described in said mortgage to the sum of $63,720.88, with interest as heretofore reported.

2nd. That the sixteen bonds held in pledge by Dan. P. Eells are a lien upon said property to the sum of $40,052.44 and interest as aforesaid.

3rd. That the sixteen bonds held in pledge by W. H. Harris are a lien upon said property to the sum of $40,029.18 and interest as aforesaid.

99 4th. That the sixteen bonds held in pledge by Charles A. Otis are a lien upon said property to the sum of $53,208.33 and interest as aforesaid.

5th. That the sixteen bonds held in pledge by John Hay and Samuel Mather, executors of Amasa Stone, are a lien upon said property to the sum of $40,049.27 and interest as aforesaid, all of said bonds being a lien of the same rank.

The intervening petitioners were represented by C. C. Baldwin and A. St. John Newberry as counsel and the contesting creditors by Henry Crawford, of Chicago, as counsel.

All the testimony taken has been reduced to writing and bound in one transcript, marked Exhibit "A." The record book of the corporation is also in evidence and, with the said transcript, is herewith filed. The original mortgage and bonds were exhibited, but by consent of counsel a copy of the mortgage was accepted and filed.

All of which testimony so identified and filed, together with this report, is respectfully submitted.

A. J. RICKS,
Special Master.

Endorsement: Final report of special master upon intervening petition of Commercial National Bank of Cleveland, Dan. P. Eels, and others. Filed May 2, 1885, A. J. Ricks, clerk U. S. circuit court.

100 And afterwards, to wit, on June 1st, 1885, exceptions to master's report, &c., *was* filed in this cause, which *is* in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

THE LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & COMPANY. } Equity.

In the matter of the intervening petition of the Commercial National Bank of Cleveland, Ohio, and others and the response of creditors thereto.

Exceptions to the Report of the Special Master.

Exceptions taken by Charles S. Worden, the Leadville Coal Company, in behalf of themselves and all other creditors of the corporation of Brown, Bonnell and Company, to the report filed herein on May 2, 1885, by the special master.

First. For that the said master found and reported that "when the bonds were executed and deposited with the trustees it was for the purpose and in expectation of so negotiating their sale in due course of time as the money might from time to time be needed," whereas the testimony shows and the master should have found that none of the said bonds were ever executed or deposited with the trustees until after the understanding among a portion of the directors that the said bonds were to be delivered to them to secure their endorsements.

101 Second. For that the said master found and reported that "in this emergency its board of directors held several meetings, and it was finally agreed among those of them largely interested in the company that they would each individually indorse its notes to the extent of $50,000 and each take as collateral security an agreed number of said bonds," whereas the evidence shows and the master should have found that the board of directors did not meet or have any agreement or understanding on such subject, but that said parties possessed themselves of said bonds, which they now claim as collateral, without any order or resolution of the board, but solely by reason of an understanding between themselves as individuals and in such a manner as not to be binding either on the corporation or its creditors.

Third. For that the said master found and reported that "the bonds were therefore validly created and executed," whereas the testimony shows that the said bonds were fraudulently executed in pursuance solely of the said before-mentioned illegal arrangement made between a portion of the directors, and the master should have so reported.

Fourth. For that the said master found and reported "that the board of directors believed and had reasonable grounds to believe that it would continue solvent and be able to pay the notes to secure the payment of which the bonds were pledged," whereas the testimony shows and the master should have so reported that the board of directors did not pledge said bonds or make any

102 agreement whatever on the subject, and that some of the board did not even have any knowledge on the subject.

Fifth. For that the said master found and reported "it would not be a fair conclusion from the evidence before me to say that said failure was anticipated or that said mortgage was kept from record for the purpose of creating a fictitious credit in expectation thereof," whereas the testimony shows and the master should have so reported that the sole reason and purpose of keeping the said mortgage off of the record was expressly declared to be to protect and sustain the existing credit of the corporation, which would have been ruined if the said mortgage had been placed on the record or became known, and the said master should further have found and reported that it was expressly agreed by the directors and the petitioners that the existence of said mortgage should be kept secret from all the creditors.

Sixth. For that the said master found and reported that "I am therefore of the opinion and do report that said mortgage is valid and in full force, and the bonds now held by said parties in pledge are a valid lien of equal rank upon the property of the defendant to the amount of the notes and interest to secure with which they were pledged," whereas the evidence shows and the master should have reported that there was no valid or enforcible pledge of any of said bonds by the said corporation, and that the secret hypothecation of bonds to said directors, who agreed among themselves to keep
103 said mortgage unrecorded and secret, was fraudulent and invalid as against all creditors.

Seventh. For that the said master should have reported that the several judgments set out in the response filed by creditors were and are, each of them, valid liens upon all the real estate of Brown, Bonnell & Company prior to the lien of said mortgage.

Eighth. For that said master should have reported that the (30) thirty bonds held by the Commercial National Bank of Cleveland were not a lien upon any of *any of* the property of Brown, Bonnell & Company for any sum whatever.

Ninth. For that said master should have reported that the sixteen bonds held by Daniel P. Eells were not a lien upon any of the property of Brown, Bonnell & Company for any sum whatever.

Tenth. For that said master should have reported that the sixteen bonds held by W. H. Harris were not a lien upon any of the property of Brown, Bonnell & Company for any sum whatever.

Eleventh. For that the said master should have reported that the sixteen bonds held by Charles A. Otis were not a lien upon any of the property of Brown, Bonnell & Company for any sum whatever.

Twelfth. For that said master should have reported that the sixteen bonds held by John Hay and Samuel Mather, executors of Amasa Stone, were not a lien upon any of the property of Brown, Bonnell & Company for any sum whatever.

104 Wherefore the exceptants pray that said report should be rejected and they have decree accordingly.

HENRY CRAWFORD, *Solicitor.*

Endorsed: Exceptions to master's report on reference to the peti-

tion of the Commercial National Bank and others. Filed June 1, 1885. A. J. Ricks, clerk U. S. circuit court.

105 And afterwards an order was entered in said cause; which order is in the words and figures following, to wit:

United States Circuit Court, Northern District of Ohio.

THURSDAY, *September 24th*, 1885.

Present: The Honorable John Baxter, circuit judge.

LAKE SUPERIOR IRON CO. *et al.* *vs.* BROWN, BONNELL & CO. } Chancery, No. 4195.

In the matter of the exceptions of the Leadville Coal Company and others to the report of the special master on the intervening petition of the Commercial National Bank and others.

This cause, having come on to be heard upon the exceptions to the report of the special master filed herein on May 2nd, 1885, was argued by counsel; and thereupon, upon consideration, the court, being of the opinion that the directors of the defendant corporation and said Commercial National Bank of Cleveland, Ohio, under the facts in said report, which the court finds to be true, did not acquire any lien or priority under said mortgage over other creditors, doth order, adjudge, and decree that the exceptions to said report be sustained and said report be set aside, and that said intervening petition, so far as it seeks to maintain a lien and priority in favor of the intervenors over other creditors under said mortgage therein set forth, be dismissed, but be retained for such further relief and protection as said intervenors may be entitled to in this cause, and that the matter of costs of this hearing and proceeding be reserved for further order of the court; and counsel interested in this proceeding having agreed that five hundred dollars will be a reasonable compensation to said special master, A. J. Ricks, for his services in this cause, it is ordered that the receiver pay to said master said sum out of the funds now in his hands, together with the further sum of $97.90 due the stenographer for reporting the testimony on this reference.

106

107 And afterwards, to wit, on Tuesday, February 23rd, 1886, the Honorable John Baxter, circuit judge, and the Honorable Martin Welker, district judge, presiding, a decree was entered in said cause, which decree is in the words and figures following, to wit:

LAKE SUPERIOR IRON COMPANY *et al.* *vs.* BROWN, BONNELL AND COMPANY. } Equity, No. 4195. Decree.

At this February term, A. D. 1886, this cause came on to be heard upon the pleadings, the reports of the special master in this cause

as confirmed by the court, the reports of the receiver of this court, exhibits, and testimony, and was argued by counsel; on consideration whereof the court find that the defendant is a corporation organized under the laws of the State of Ohio, and was at the time of the appointment of the receiver herein insolvent, and that ever since such time it has remained and is now insolvent; and that the equity of the case is with the complainants herein, and that complainants on their own behalf and on behalf of all other creditors of said defendant who have proved their claims herein are entitled to the relief against said defendant in said original and amended bills prayed for; and the court further find that the said defendant, Brown, Bonnell & Company, is indebted to the several persons and corporations named herein below in the amounts stated, which amounts include interest to the first day of June, A. D. 1884, and which amounts are entitled to draw interest at the rate of six per centum per annum from that date:

108

1.	Upson, Walton & Co.	Cleveland, O.	43 45
2.	Wm. Tod and Co.	Youngstown, O.	196 87
3.	Niagara Refining Co.	Buffalo, N. Y.	107 26
4.	Carbon Limestone Co.	Youngstown, O.	1,209 90
5.	Moravia Limestone Co.	Do.	36 09
6.	Greenville Nat. Bank	Greenville, Pa.	10,384 49
7.	McVay and Walker	Braddock, Pa.	29 46
8.	B. F. Parsons	Johnsonville, O.	31 79
9.	Sharon Nat. Bank	Sharon, Pa.	108,358 00
10.	H. C. Frick Coke Co.	Pittsburgh, Pa.	784 68
11.	B. F. Goodrich Co.	Akron, O.	18 05
12.	Cleveland Malleable Iron Co.	Cleveland, O.	34 90
13.	Girard Savings Bank	Girard, O.	5,810 09
14.	Otis Iron & Steel Co.	Cleveland, O.	1,481 94
15.	Taylor Iron Co.	Do.	12,812 03
16.	Merchants' Nat. Bank	Meadville, Pa.	35,044 70
17.	A. D Truesdell	Warren, O.	12 72
18.	Brush Electric Co.	Cleveland, O.	518 43
19.	John Carlin & Co.	Pittsburgh, Pa.	614 80
20.	Robinson, Rea & Co.	Do.	216 90
21.	Cameron, Amberg & Co.	Chicago, Ill.	4 50
22.	Westerman, Filer & Co.	Sharon, Pa.	1,506 90
23.	Pendleton Bros. & Co.	Rochester, Pa.	563 60
25.	Leadville Coal Co.	Youngstown, O.	12,376 92
26.	New York, Pa. & O. R. R. Co.		3,778 64
27.	Samuel Osborn & Co.	Boston, Mass.	137 78
28.	Edward H. Kellogg	New York, N. Y.	782 05
29.	Allegheny Coal Co.	Youngstown, O.	162 20
30.	Chalmers, Spence & Co.	New York, N. Y.	205 42

109

31.	Alberta Coal Co.	New Lisbon, O.	266 39
32.	S. Obermeyer & Co.	Cincinnati, O.	93 59
33.	A. Garrison & Co.	Pittsburgh, Pa.	213 17
34.	Wm. Liggett	Lowellville, O.	37 91
35.	Jos. C. Brennan	Youngstown, O.	543 27
36.	First Nat'l Bank	Garrettsville, O.	6,202 24
37.	Jno. B. Vinton	Youngstown, O.	594 36
38.	Shenango Coal Co.	Do.	20,353 60
39.	Short & Forman	Cleveland, O.	41 95
40.	Woods, Perry & Co.	Do.	645 85
41.	W. H. Rickey	Cincinnati, O.	23 17
42.	Sharon Coal Co.	Sharon, Pa.	320 48

43.	P. Jacobs & Sons	Youngstown, O.	4,849 05
45.	Lowell Limestone Co.	Lowellville, O.	2,362 94
46.	Adams & Westlake Man'f'g Co.	Chicago, Ill.	48 11
47.	Brier Hill Stone Co.	Brier Hill, O.	23 70
48.	Rossie Iron Works	New York, N. Y.	9,087 05
49.	Martin Quigley	Erie, Pa.	3,586 05
50.	Joseph H. Davis	Sewickly, Pa.	21 77
51.	A. Armstrong	Warren, O.	7 10
52.	David Jones	Youngstown, O.	1,137 57
53.	Second Nat. Bank	Do.	13,413 88
54.	First Nat. Bank	Do.	52,908 56
56.	Park Bros. & Co.	Pittsburgh, Pa.	149 03
57.	Standard Oil Co.	Youngstown, O.	382 81
58.	Atwood & McCaffrey	Pittsburgh, Pa.	9 23
59.	R. L. Walker	Poland, O.	10,619 06
60.	Edward Bell and Sons	Youngstown, O.	1,222 82
61.	Youngstown Water Works	Do.	51 03
62.	Foster Coal Co.	Do.	2,648 44

110

63.	Andrews & Hitchcock	Youngstown, O.	21,826 25
64.	John Cannon	Coaltown, Pa.	148 05
65.	J. H. Outhwaite & Co.	Cleveland, O.	1,004 74
66.	Nelson P. Read & Co.	Pittsburgh, Pa.	3 97
67.	Wilcox and Scaife	Do.	232 39
68.	Milliken, Boyd & Co.	Youngstown, O.	233 69
69.	Electrical Supply Co.	Ansonia, Conn.	392 37
70.	United Pipe Lines	Oil City, Pa.	354 39
71.	W. R. Errett	Allegheny, Pa.	18,242 10
72.	Himrod Furnace Co.	Youngstown, O.	10,568 87
74.	Geo. D. Wick	Cleveland, O.	15,232 86
75.	Chess Stoner	North Hope, Pa.	125 46
76.	H. L. & E. A. Schwartzenburg	Cleveland, O.	177 55
77.	Brooks Oil Co.	Do.	48 11
78.	John S. Williams	Youngstown, O.	19,811 76
79.	Hertley & Marshall	Pittsburgh, Pa.	3,456 31
80.	Crocker Bros.	New York City	212 23
81.	Phillips, Stewart & Co.	Mercer, Pa.	62 82
82.	Menemonee Mining Co.	Milwaukee, Wis.	3,021 88
83.	B. F. Rafferty	Pittsburgh, Pa.	197 25
84.	Florence Mining Co.	Milwaukee, Wis.	61,715 00
85.	Witch Hazel Mining Co.	Youngstown, O.	1,112 69
86.	Park and Westlake	Do.	283 76
87.	First Nat. Bank	Mercer, Pa.	11,366 37
88.	Meyer & Lowenstein	New York, N. Y.	85 25
89.	McMillin Oil Co.	Cleveland, O.	410 49
90.	Commercial Nat. Bank	Do.	63,720 88
91.	American Nail Machine Co.	Ashtabula, O.	12 38
92.	Pittsburgh & L. E. R. R. Co.		5,630 64

111

93.	Lorenzo Lane	Youngstown, O.	5,927 15
94.	McIntosh Hemphill & Co.	Pittsburgh, Pa.	426 15
95.	Dan. P. Eells	Cleveland, O.	40,052 44
96.	Wm. H. Harris	Do.	40,029 18
97.	Henry Wick & Co.	Do.	11,790 78
98.	J. Park Alexander	Akron, O.	133 73
99.	Wick Bros. & Co.	Youngstown, O.	29,208 51
100.	Man'f'rs & Traders' Bank	Buffalo, N. Y.	10,668 63
101.	Pratt & Co.	Do.	574 61
102.	Pennsylvania Co.		20,772 97
103.	A. & W. Powers	Youngstown, O.	1,019 69
104.	Hiram Parks	Do.	5,894 44
105.	S. Kane	Pittsburgh, Pa.	494 20
106.	National Bank of West Va.	Wheeling, W. Va.	5,828 47
107.	C. M. Roberts	Pittsburgh, Pa.	248 45

108.	Totten & Co.	Pittsburgh, Pa.	693 33
109.	Dunbar Coke Co.	Do.	195 96
111.	National B'k Fayette Co.	Uniontown, Pa.	52,922 06
112.	Port Royal Coal & Coke Co.	Youngstown, O.	117 28
113.	Citizens' Nat. Bank	Pittsburgh, Pa.	69,903 43
114.	Second Nat. Bank	Ravenna, O.	35,707 66
115, 116.	Geauga S. & L. Ass'n	Chardon, O.	12,252 28
117.	Ashcroft M'f'g Co.	New York, N. Y.	5 40
118.	Savage Fire Brick Co.	New Cumberland, W. Va.	159 36
119.	D. B. Chambers	Youngstown, O.	962 11
120.	Importers & Traders' Nat. B'k	New York, N. Y.	50,175 22
121.	Imperial Coal Co.	Pittsburgh, Pa.	7,696 64
122.	W. F. Sandford	Dunbar, Pa.	790 50
125.	Arthur Conway	Erie, Pa.	1,557 59
126.	Phenix Fire Brick W'ks	Pittsburgh, Pa.	589 62

112

127.	H. Loomis & Co.	Pittsburgh, Pa.	1,307 48
128.	Hubbard Nat. Bank	Hubbard, O.	12,008 40
129.	Jackson Iron Co.	Cleveland, O.	12,069 69
130.	Lake Superior Iron Co.	Do.	13,152 52
131.	H. O. Bonnell *et al.*	Youngstown, O.	1,034 90
132.	Wm. B. Conway	Warren, O.	118 95
133.	American Manufacturer	Pittsburgh, Pa.	53 74
134.	Warren Idings	Warren, O.	118 95
135.	Republic Iron Co.	Cleveland, O.	41,064 25
137.	Cartright, McCurdy & Co.	Youngstown, O.	97 90
138.	First Nat. Bank	Bellaire, O.	5,998 97
139.	Goeppinger & Resch	Youngstown, O.	17 36
140.	Stambaugh, Thompson & Co.	Do.	7 21
141.	Morris Hardware Co.	Do.	33 53
142.	J. H. Bushnell	Do.	2 04
143.	A. B. Brownlee & Co.	Do.	6 46
144.	Nicholas Frech	Do.	81 84
145.	Ellis Planing Mill Co.	Do.	40 16
146.	Wick C. Gans	Do.	19 05
147.	Geo. H. Dingledy	Do.	13 57
148.	Robert Hunter & Co.	Do.	54 00
149.	Pittsburgh Steel Casting Co.	Pittsburgh, Pa.	50 35
150.	Cleveland Rolling Mill Co.	Cleveland, O.	599 70
151.	Dillinger & Co.	West Bethany, Pa.	28 89
152.	Laing & Davidson	Pittsburgh, Pa.	1,284 64
153.	L. S. & M. S. R'y Co.		614 75
154.	Wheatland Bessemer Steel Co.	Pittsburgh, Pa.	195 30
155.	Chas. A. Otis	Cleveland, O.	53,208 33
156.	Alexander & Co.	Allegheny, Pa.	278 42
157.	Amasa Stone	Cleveland, O.	40,049 27

113

158.	Brier Hill Iron & Coal Co.	Youngstown, O.	11,206 48
159.	Manning, McKeon & Co.	Do.	29 18
160.	Kirk, Christy & Co.	Warren, O.	150 44
161.	Jarecki M'f'g Co.	Erie, Pa.	18 49
162.	Reid Bros.	Dunbar, Pa.	6,127 19
163.	E. W. Powers & Co.	Youngstown, O.	8 90
164.	Job Evans	Do.	299 33
165.	Farmers & Mechanics' Nat. Bank	Mercer, Pa.	11,811 58
166.	Farmers' Deposit & Savings Bank	Poland, O.	5,962 71
167.	Shenango Machine Co.	Sharon, Pa.	22 12
168.	American Exchange Nat. Bank	New York, N. Y.	11,419 03
169.	Pittsburgh Nat. Bank of Commerce	Pittsburgh, Pa.	11,689 42
170.	Iron Cliffs Co.	Negaunee, Mich.	1,587 70
171.	Third Nat. Bank	New York, N. Y.	3,133 03
172.	First Nat. Bank	Warren, O.	18,015 64
173.	Jno. Geddes	Liberty, O.	10 78

174. Sidney Strong	Youngstown, O.	171 00
175. Monongahela Nat. Bank	Brownsville, Pa.	35,205 49
176. Webb, Hart & Co.	Boston, Mass.	423 01

114 And the court further find that there is now in its possession by its receiver, Fayette Brown, Esquire, real and personal property of said defendant described as follows:

The following-described thirty-two parcels of land, all situate in the county of Mahoning, in the State of Ohio, and described and known respectively as follows:

1st parcel.—Part of lot No. 10, in the east division of outlots in the original town plat of Youngstown, and is bounded as follows: Beginning at a post on the east line of the highway to Gibson's fording and fifteen feet from common water mark in the Pennsylvania and Ohio canal, running thence south on the east line of said road sixteen (16) rods; thence east ten (10) rods; thence north sixteen (16) rods; thence west on the bank of said canal 15 feet from common water mark 10 rods to the place of beginning, containing one acre of land.

The second parcel is also a part of said outlot No. 10, and is bounded as follows: Beginning at the northeast corner of the first parcel 15 feet from the top water line of the said canal, running thence south 18 rods and 23 links to the Mahoning river; thence eastwardly on the north bank of said river 18 rods and 12 links to a post near the outlet of a ditch; thence north parallel with the east line of the first parcel 16 rods and 21 links to the bank of said canal, and thence on the bank of said canal N. 86½ degrees west 18 rods to the place of beginning, containing about two acres and seventeen perches.

The third parcel is bounded as follows: Beginning at low-water mark on the north bank of the Mahoning river and on the
115 east line of the second parcel, on which stands the Falcon furnace, running thence north on said east line of the second parcel to a stake fifteen feet from the water in said canal; thence eastwardly along the bank of said canal, keeping 15 feet from the water therein, to a point such that if a line were drawn from it southerly parallel with the first-named boundary line of this parcel so as to meet a line drawn eastwardly along the bank of said river from the place of beginning there would be contained within said four boundary lines one acre of ground, and said parcel has for its boundary lines the said four described lines.

The fourth parcel is known as part of lot No. 1, in the original survey of the south division of outlots in the town plat of Youngstown, and is bounded on the northerly side by the outer line of the towing path of said canal; on the easterly side by the highway or street leading to the Mahoning bridge; on the southerly side by the Mahoning river, and on the westerly side by the west line of said lot No. 1, which is also the east line of lands formerly owned by the late William Rayen, deceased.

The fifth parcel is bounded as follows: Beginning at the northwest corner of a lot known as the Phœnix Furnace lot and at a

point fifteen feet south of the common water mark in said canal, thence running S. 29¼ degrees W. 8 chains and thirty-five links to low-water mark on the north bank of the Mahoning river; thence N. 82¾ degrees W. 6 chains 7½ links; thence N. 29¼ degrees E. 3 chains 30½ links; thence N. 60¾ degrees W. 1 chain 89½ links; thence N. 29¼ degrees E. 5 chains 30 links to an iron stake 15 feet south of top-water line of said canal; thence S. 73 degrees E. 1 chain 72 links; thence S. 76¾ degrees E. 6 chains 4 links to the
116 place of beginning, containing about 5.924 acres.

The sixth parcel is bounded and described as follows: Beginning at a point on the north line of the right of way and lands formerly belonging to the Pennsylvania and Ohio Canal Company where said line is met by the west line of the east half of lot No. 33 of Bane and Wick's subdivision of a part of the south division of outlots on the town-plat of Youngstown, thence running northerly along said west line to the south line of the north half of said lot 33; thence westerly along said south line and parallel with Bane street to the west line of said lot 33; thence northerly along said west line of said lot 30 feet; thence easterly parallel with Bane steeet to the west line of the east half of said lot; thence northerly along said west line of said east half of said lot 12 feet; thence easterly parallel with Bane street to the east line of said lot 33; thence northerly along said east line of said lot to the south line of Bane street; thence easterly along the south line of Bane street to a point where said south line of Bane street would be met by the production southerly of the east line of Walnut street; thence northerly along the southerly production of said east line and along the east line of Walnut street to the northeast corner of lot No. 21 of said Bane and Wick's subdivision; thence easterly parallel with Bane street to the northeast corner of lot No. 16 of Bane and Wick's said subdivision; thence easterly along the south line of an alley to the west line of Presque Isle street; thence southerly along said west line last named to the north line of the right of way and lands formerly belonging to said canal company, and thence westerly along said north line of said right of way and lands last named to the place of beginning.

117 The seventh parcel is a part of lot No. 252 of the latest numbering of lots in said city, and is bounded as follows: Beginning at the southeast corner of said lot, thence running northerly along the east line thereof 18 feet; thence by a southwesterly course to a point on the south line of said lot distant westerly forty-five and one-half feet from the southeast corner of said lot; thence easterly along the south line of said lot 45½ feet to the place of beginning.

The eighth parcel is bounded as follows: Beginning at a point on the east line of Presque Isle street S. 2½ degrees 26 links from the southwest corner of a lot conveyed to Brown, Bonnell & Co. by C. H. Andrews *et al.* by a deed which is recorded in the records of said county, in vol. 20, at page 84 *et seq.*, thence running 2½ degrees W. along said east line of said street 20 feet; thence S. 81½ degrees

E. 1 chain and 52 links; thence N. 4 degrees E. 20 feet; thence N. 81½ degrees W. one chain and 53 links to the place of beginning.

The ninth parcel is that part of lot No. 33 which was conveyed to Andrews & Hitchcock, 2nd July, 1860, by David Tod, and is bounded as follows: Beginning at a stake on the line between said lot and lot 32 1 chain 68 links S. 29½ degrees W. from the south line of Front street, thence running S. 29½ degrees W. 95 links to the canal; thence up said canal 49 links; thence N. 4 degrees E. 1 chain 50 links; thence S. 82½ degrees E. 31 links; thence S. 87¾ degrees E. 58 links to the place of beginning.

The 10th parcel is that part of outlot No. 32 of the southeast division of outlots in the former village of Youngstown which
118 on the 12th September, 1859, was conveyed by J. Warner to Andrews and Hitchcock, and is bounded as follows: Beginning at a stake where the west line of said lot 32 meets the berme bank of said canal, running thence N. 29½ degrees E. 95 links; thence S. 85 degrees E. 1 chain 23 links; thence S. 28½ degrees W. 80 links; thence S. 89 degrees W. 1 chain 30 links to the place of beginning.

The eleventh parcel is the south part of city lot No. 281 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presque Isle S. 2½ degrees W. 2 chains 78¼ links from the southeast corner of Front and Presque Isle streets, thence running along the east line of Presque Isle street S. 2½ degrees W. 26 links; thence S. 79¾ degrees E. 1 chain 53 links; thence N. 4 degrees E. 21 links; thence N. 77 degrees W. 1 chain 55 links to the place of beginning.

The 12th parcel is known as city lot No. 280 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presque Isle street S. 21 2 degrees W. 20 feet from the southwest corner of said lot 281, thence running along the east line of said street S. 2½ degrees W. 65½ links to said canal; thence along the north side of high water in said canal S. 83½ degrees E. 1 chain 50 links; thence N. 4 degrees E. 52⅛ links; thence N. 79⅜ degrees W. 1 chain 52 links to the place of beginning.

The thirteenth parcel is all the land which was conveyed on the 5th December, 1863, by William Lindsay *et ux.* to the firm of Brown, Bonnell & Co. by a deed which is recorded in said records in vol. 28, at page 233 *et seq.*, which deed is here referred to.

119 The fourteenth parcel is all the land ever owned or occupied by the Pennsylvania & Ohio Canal Company which lies between the centre of Crab creek on the east and the east side of what is known as Rany's mill on the west, including between said east and west boundaries all the land ever occupied by berme bank, water channel, and towing path of said canal.

The fifteenth parcel comprises all the lands conveyed to the firm of Brown, Bonnell & Co. by Henry Manning on the 26th November, 1863, by a deed recorded in said records in vol. 19, at page 711, except such part of said lands as lie in the fourteenth parcel, and including all such rights as were conveyed by said Henry Manning in his said deed, which is here referred to.

The fifteen parcels above named were conveyed on the 9th day of October, 1875, by Joseph H. Brown *et al.* to the party of the first part by a deed which is recorded in the records of said county in vol. 38, at page 606 *et seq.*, and is here referred to.

The sixteenth parcel is the west half of the south half of lot No. 33, in Bane & Wick's said subdivision, and also all of lot No. 32 in said subdivision, except such part of said lot No. 32 as was sold by Almon Raney and wife and Bostwick Raney to Ellen Ferrall, and also except such part of said lot 32 as was conveyed by said Almon Raney and wife and Bostwick Raney to Ann McGraw by a deed which is recorded in the records of said county in vol. 19, at page 493. Said 16th parcel was conveyed to said corporation 9th October, 1879. by H. O. Bonnell *et ux.* by a deed recorded in said records in vol. 45, at page 352.

The seventeenth parcel is the north half of the west half of lot No. 33, in said Bane & Wick's subdivision, excepting so
120 much thereof as was conveyed away by George A. Young prior to 24th March, 1880. The part above conveyed of said north half was conveyed to said corporation by A. W. Jones *et ux.* 24th April, 1880, by a deed recorded in said records in vol. 47, at page 384, and this seventeenth parcel shall contain as a part thereof all the interest conveyed by said Jones in said deed to said corporation in any other part of said lot 33 of said subdivision.

The eighteenth parcel contains all that part of lot 275 of the latest enumeration of said city which was conveyed to said corporation by Mary Degen *et al.* 24th November, 1880, by a deed which is recorded in said records in vol. 48, at page 98, which deed is here referred to.

The nineteenth parcel is city lot No. 574 of the latest enumeration of said city, and was conveyed to said corporation 3rd January, 1881, by John Rigney *et ux.* by deed recorded in the records of said county in vol. 45, at page 583.

The twentieth parcel is lot No. 572 of the latest enumeration in said city, and was conveyed 8th February, 1881, to said corporation by Bryan Kennedy *et al.* by a deed recorded in said records in vol. 49, at page 14.

The twenty-first parcel is lot No. 571 of the latest enumeration in said city, and was convered 22nd February, 1881, to said corporation by E. M. Wilson, administrator of Patrick Corrigan, by a deed recorded in the said records in vol. 48, at page 291.

The twenty-second parcel is the east half of lot No. 580 of the latest enumeration in said city, and was conveyed to said corporation 19th March, 1881, by Christian Ludd *et al.* by a deed recorded in said records in vol 49, at page 93.

121 The twenty-third parcel is the northwest part of original lot No. 11 as shown by a plat of village lots of Youngstown made by Dr. Henry Manning and recorded in Mahoning County Records of Plats, vol. 1, page 51, bounded as follows: Commencing at the northwest corner of said lot No. 11, thence N. 74½ degrees E. 1 chain to lot owned by H. Fee and now known as city lot 582, new numbers; thence south two chains 7½ links; thence west 98

links to east line of original lot No. 12; thence N. ½ degree E. 2 chains 44½ links to the place of beginning, containing about one-fourth of an acre of land, and was conveyed 1st July, 1881, to said corporation by Thomas George *et ux.* by a deed recorded in said records in in vol. 49, at page 393.

The twenty-fourth parcel is the west half of lot No. 580 of the latest enumeration in said city, and is the same land which was conveyed to said corporation 1st July, 1881, by Catharine Scanlon *et al.* by a deed recorded in said records in vol. 49, at page 392.

The twenty-fifth parcel is part of a larger parcel of ground conveyed to John Stambaugh, trustee, by W. S. Parmelee, trustee, 31st July, 1871, by a deed recorded in said records in Deed Book 31, at page 273 *et seq.*, and is bounded and described as follows: Beginning on the east line of said larger parcel at the middle of the stone monument standing at the northeast corner of a piece of ground conveyed by the Liberty & Vienna Railroad Company to the Ashtabula, Youngstown and Pittsburgh Railroad Company by a deed dated 25th August, 1871, and recorded in said records in vol. 33, at page 463 *et seq.*, thence running along the east line of said larger parcel conveyed as aforesaid by W. S. Parmelee, trustee, N. 30 de-
122 grees 28 minutes east about 398.7 feet to a stone monument at a point 15 feet southerly from the line of high-water mark on the south side of the Pennsylvania & Ohio canal; thence along a line parallel with and distant fifteen feet southerly from the said line of high-water mark on the south side of said canal N. 49 degrees 44 minutes W. about 135¾ feet to a point which, measured along a line perpendicular to the east line of Market street, is distant easterly 150 feet from the east line of Market street; thence along a line parallel with and distant 156 feet easterly from the east line of Market street S. 31 degrees 20 minutes W. about 421.2 — to the north line of said ground conveyed as aforesaid to the Ashtabula, Youngstown & Pittsburgh Railroad Company, and thence along the said north line of land conveyed to said railroad company S. 59 degrees 2 minutes E. about 139.7 feet to the beginning, containing 1 acre and .28388 of an acre of land, and is the same land conveyed to said corporation by John Stambaugh, trustee, *et al.* 14th July, 1881, by a deed recorded in said records in vol. 50, at page 66 *et seq.*

The twenty-sixth parcel is the east end of outlot No. 2, in said city, contains about 3 and .002 of an acre of land, and is the same land conveyed to said corporation 30th July, 1881, by Edwin Bell *et al.* by a deed recorded in said records in vol. 50, at page 63 *et seq.*, which deed is here referred to for a more particular description of said last-named parcel.

The twenty-seventh parcel is lot No. 578 of the latest enumeration in said city, and was conveyed to said corporation 16th November, 1881, by Mary Kelley by a deed recorded in said records in vol. 51, at page 34.

The twenty-eighth parcel is the east part of lot No. 575
123 of the latest enumeration of said city, and bounded as follows: Beginning at the northwest corner of lot No. 574, on the south line of the Pennsylvania and Ohio canal, thence in a westerly

course parallel with the south line of said lot No. 575 25 feet; thence south parallel with the west line of said lot No. 574 to the north line of lot No. 573; thence east along the north line of said lot No. 573 25 feet to the southwest corner of lot No. 574, and thence north along the west line of lot No. 574 to the place of beginning, and was conveyed to the said corporation 25th November, 1881, by Mary Joice *et al.* by a deed recorded in said records in vol. 51, at page 63.

The twenty-ninth parcel is the west part of lot No. 575 of the latest enumeration in said city, situated on the south side of the Pennsylvania & Ohio canal, bounded on the north by the towing path of said canal; on the east by the east part of said lot No. 575, which said east part was conveyed by said Charles Gillen and Mary Kelly; on the south by lots 573 and 577, and on the west by lot 576, and was conveyed to said corporation 2nd December, 1881, by Michael Connors *et ux.* by a deed recorded in said records in vol. 51, at page 90.

The thirtieth parcel, situated in the city of Youngstown, county of Mahoning and State of Ohio, and known as being a part of city lot number two hundred and fifty-seven (257), and is bounded as follows, to wit: Beginning at the northeast corner of Champion and Bane streets, in said city, which is also the southwest corner of said lot number 257, thence south 60 degrees east along the north line of Bane street seventy-five (75) feet to the east line of said lot number 257; thence north 30 degrees east along said line between said lots numbers 256 and 257 one hundred (100) feet; thence north 60 degrees west parallel with said north line of Bane street seventy-five (75) feet to the east line of Champion street; thence south 30 degrees west along said east line of Champion street one hundred (100) feet to the place of beginning, and being a part of the same premises conveyed by Henry Wick, Mary T. Wicks, Hugh B. Wick, and Lucretia T. Wick to John Keef by a deed dated the 8th day of April, 1869, and by the said John Keef and Mary A. Keef, his wife, conveyed to Owen Evans by deed dated the 26th day of July, A. D. 1881, and by the said Owen Evans and Ann Evans, his wife, conveyed to Chauncey H. Andrews by deed dated the 30th day of November, A. D. 1881, and being a part of lot number twenty-six (26) of Bane and Wick's subdivision of a part of the southern division of outlots of the village of Youngstown, be the same more or less, but subject to all legal highways.

Thirty-first parcel, all of the two lots and parcels of land lying and being situate in township of Poland, county of Mahoning and State of Ohio, the first of which said two parcels is known as being a part of great lot number twenty-one (21) of the original survey of said township, and is bounded and described as follows, to wit: Beginning at a post in the line between lands formerly owned by W. H. McCombs and lands formerly owned by Thomas Struthers, north of and twenty-five feet from the center of the Lawrence railroad, thence by said line N. 3.80 degrees E. twelve and twenty one-hundredths (12.20) chains to a post (now stone), corner; thence S. 89 degrees E. (23.30) twenty-three and thirty one-hundredths chains to the center of the Mahoning river; thence S. forty-two (42) degrees

E. eight and eighty one-hundreths (8.80) chains; thence S.
125 39½ degrees W. eleven and twenty-one one-hundredths (11.21) chains; thence N. 30½ degrees W. eight and fifty-nine one-hundredths (8.59) chains; thence west nine and ninety one-hundredths (9.90) chains; thence S. 39½ degrees W. six and forty-four one-hundredths (6.44) chains; thence N. 50½ degrees W. two and eleven one-hundredths (2.11) chains to the place of beginning, containing twenty-nine and forty-nine one-hundredths (29.49) acres of land, more or less.

The second of said two parcels of land is known as being a part of great lot number eleven (11) of the original survey of said township, and is bounded and described as follows, to wit: Beginning at a post on the line between the above-described parcel of land and land formerly owned by W. H. McCombs and thirty-three (33) feet north 39½ degrees east from the center line of the Lawrence railroad, thence N. 32⅜ degrees east five chains and nine (9) links to a post; thence N. 84¼ degrees W. one chain and seventy-eight (78) links; thence N. 81⅞ degrees W. one (1) chain and fifty-four (54) links; thence N. 72⅜ degrees W. 1 chain and fifty links; thence N. 77¼ degrees W. one chain and fifty (50) links; thence N. 67⅜ degrees W. one (1) chain and fifty links; thence N. 62⅜ degrees W. two (2) chains and thirty-six (36) links; thence along the north line of the Lawrence railroad, being thirty-three (33) feet from the center line of said railroad, S. 50½ degrees E. twelve (12) chains and forty-six (46) links to the place of beginning, containing two and three (2.03) one-hundredths acres of land, more or less, and being the same land which was conveyed by W. H. McCombs and wife to Thos. Struthers and others by deed dated 13 April, 1869, and recorded in Mahoning County Records, in vol. 26, at page 727 *et seq.*

126 The grantors also give and grant to the said grantee, its successors and assigns, all the rights and privileges that they may have or own in the right of way upon which is constructed the switch railroad track connecting the above-described lands and running over a part of the same with the Pittsburgh and Lake Erie Railroad Company's main line, reserving, however, the right at any time to and for them or any of them or their heirs or assigns to make connection with the said switch at any place where it runs on or over their own or other adjacent lands not hereby conveyed.

Thirty-second parcel, situated in the city of Youngstown, county of Mahoning and State of Ohio, and known as part of what is now called outlot No. 6 according to the latest numbering of lots in said city; said lot of land was formerly known as part of outlot No. 10, in the east division of the original outlots of said city, and bounded as follows, to wit: Commencing at a point on the east side of Presque Isle street distant southerly sixteen rods (16) from a point on said east side of said street fifteen (15) feet south from what was common water mark in the Pennsylvania and Ohio canal (which point is now marked by an iron pin, located and driven by James Mackey, surveyor), thence south with the east line of Presque Isle street sixty-seven feet ten and one-half inches (67 ft. 10½ in.) to a point four feet north of the north rail of the Ashtabula, Youngstown & Pittsburgh

railroad track; thence north seventy-eight (78) degrees east one hundred and seventy-two and one-twelfth (172$\frac{1}{12}$ feet) feet to a point; thence north on a line parallel with the east line of Presque Isle street fourteen feet nine and one-half inches (14 ft. 9$\frac{1}{2}$ in.)
127 to a point that is in the southeast corner of a certain lot of ground conveyed September 3rd, 1852, by Charles Grute to James H. Ford by deed recorded in Mahoning County Record of Deeds, vol. 7, p. 183; thence westerly on the southern boundary line of said lot conveyed by Grute to Ford a distance of ten (10) rods to the place of beginning, with all appurtenances thereunto belonging, together with all and singular the buildings, structures, boilers, engines, fixed and movable machinery, fixtures, tools, implements, locomotives, cars, railway track and appliances, office furniture and fixtures, patterns, duplicate rolls, castings, lumber, and all other personal property belonging or pertaining to the said real estate and used in connection therewith in carrying on the business of manufacturing now or formerly carried on upon the said premises, and now upon the same, connected therewith or pertaining thereto, and also a large amount of material and supplies and product in process of manufacture, which is being changed in the operation of said plant, and is, therefore, not capable of exact inventory.

Also—

1. Eight hundred shares of stock in the Mahoning Coal Company, a corporation organized under the laws of the State of Ohio.

2. A two-thirds interest in the partnership known as Erskine & Co., doing business in the city of Youngstown, Ohio.

3. Five leases of coal land in Butler county, Pennsylvania, standing in the name of Ralph Wick, trustee, and made by John H. and Sarah J. Chambers, Alex'r Black, William Christie, James Kelly, and Walter Currie, and embracing together 392 acres of land.

128 4. The right to remove sand and gravel from a certain tract of land described as follows: A tract or lot of land situated in Coltsville township, in the county of Mahoning and State of Ohio, being part of great lot No. 8 in the original survey of said township, and bounded as follows: On the north by the center line of the McGuffy road; on the east by lands owned on the 28th day of May, 1863, by John Brownlee; on the south by lands owned at the same date by said Brownlee, Aaron C. Sears, and Isaac Kimmel; on the west by lands owned at the same date by David Pothous, being the farm upon which said Alfred C. Sears formerly resided, containing thirty-eight and eight one-hundredths acres, being the same land conveyed to Catharine Huist by Brown, Bonnell & Co. January 20th, 1865, and recorded in Book 21, pages 265 and 266, of Mahoning county records of deeds.

And the court further find that the amount herein found due to Wilcox and Scaife is a first lien on property herein described and is entitled to priority of payment in full; that the remaining creditors named herein are in equity entitled to payment of their claims herein stated with interest thereon *pro rata;* that said creditors are in equity entitled to a sale of said premises and property and to payment of their claims and interest out of the proceeds of such sale,

and that said property will sell to better advantage as a whole than if sold in parcels.

The court do further order, adjudge, and decree that the said defendant, Brown, Bonnell and Company, within five days from the entering of this decree, pay or cause to be paid to the creditors specified herein, or to the clerk of this court for their use, the
129 amounts herein found to be due to said creditors, together with the costs of this action, to be taxed, and that in default of such payment an order of sale issue to Wilbur F. Goodspeed, who is hereby appointed special master commissioner for that purpose, commanding him to cause the real and personal property herein described, except materials and supplies and products manufactured or in process of manufacture, to be appraised, advertised, and sold as upon judgments at law, and to sell the same in one parcel without division, and to make report to this court of such sale for confirmation.

And it is further ordered that of the purchase price so bid not less than the sum of twenty thousand ($20,000) dollars shall be paid in cash, to be deposited in the registry of this court, and also such further portions of such purchase price shall be paid in cash and so deposited from time to time as this court in this case may direct, the court reserving the right to resell in this case said premises and property at the expense of such purchaser and to charge such purchaser with any loss occasioned by such resale upon failure of the purchaser thereof or *their* successors or assigns to comply within twenty days *of* an order of the court in that regard; and the balance of the purchase price not required to be paid in cash may be paid either in cash or the purchaser at such sale shall have the right to satisfy the said remainder of his bid, in whole or in part, by paying over and surrendering claims proved in this cause and stated herein at such price or value as would be equivalent to the distribution amount that the holders thereof would be entitled to receive thereon in case the entire amount of the bid were paid in cash.
130 And it is further ordered that the receiver herein be, and he is hereby, empowered and ordered to sell at private sale all the materials and supplies and product manufactured or in process of manufacture in his hands for such reasonable price and at such time as in his discretion he shall deem best.

The court, for good cause shown, dispense with any advertisement of such sales in any newspaper published in the German language.

And it is further ordered that the sale of said property be made subject to the fulfillment of any pending and unfinished contract or contracts made by the said receiver in the carrying on of said business by the authority of this court, and that the purchaser at such sale, at such time as the court may direct, give bond to the said receiver in the penal sum of $20,000.00, with surety to be approved by the clerk of this court, to protect and save harmless the said receiver from any and all liability on any such pending and unfinished contract or contracts.

It is further ordered that, as to all other property, moneys, and

credits of said defendant now in the hands of said receiver or which may hereafter come into his hands, he, the said receiver, hold the same subject to the further order of this court.

It appearing to the court that the Pittsburgh and Lake Erie railroad and the Citizens' National Bank of Pittsburgh, creditors of the defendant who have proved their claims in this cause, did, after the appointment of the receiver, by procuring process of attachment to be issued out of certain courts in the State of Pennsylvania against the property and credits of the said defendant found in said State of Pennsylvania, obtain for themselves advantages over the
131 other creditors of said defendant in the following amounts

The Pittsburgh and Lake Erie Railroad	$5,768 01
The Citizens' National Bank of Pittsburgh	3,745 41

It is therefore ordered and decreed that the said The Pittsburgh and Lake Erie Railroad and The Citizens' National Bank of Pittsburgh shall not be entitled to receive out of the proceeds arising from any sale made herein any portion thereof in dividends or *pro rata* shares until dividends or *pro rata* shares have been paid or credited to creditors herein named, other than said attaching creditors, sufficient in amount to equalize said advantages and sufficient to make the amounts so received by or credited to said other creditors bear the same proportion to the full amount of their claims that the amounts obtained by said attachments bear to the full amounts of the several claims of said attaching creditors.

And, it further appearing to the court that the firm of Webb, Hart & Co., one of the creditors who have proved their claims herein, has become indebted to the receiver herein for goods sold and delivered, and that judgment has been obtained against said firm by the receiver on account of said indebtedness in the amount of $1,054.45 damages and $30.65 costs, upon which judgment execution has been issued and returned *nulla bona*, and that said judgment is still unsatisfied and unreversed, it is therefore ordered and decreed that out of any amount payable on account of said claim of Webb, Hart & Co. there shall first be paid to said receiver an amount sufficient to satisfy said judgment and costs before any part of said amount shall be paid to said Webb, Hart & Co., and that, as to all matters and things not herein disposed of, this cause be continued.

(Signed) JNO. BAXTER, *Judge, &c.*
M. WELKER, *Dist. Judge.*

132 And afterwards, to wit, on the 31st day of May, 1890, the petition of the Leadville Coal Company was filed in said cause, which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Illinois.

THE LAKE SUPERIOR IRON COMPANY, THE JACKSON IRON COMPANY, *et al.*, Complainants,
vs.
BROWN, BONNELL & COMPANY, Defendants.

To the honorable judges of said court, your petitioners, the Leadville Coal Company, and Charles S. Worden, respectfully show—

That it duly appears in and by the records and papers of this cause that they are respectively judgment creditors of the original and sole defendant corporation called Brown, Bonnell & Co., and as such entitled to their distributive share of the assets of such corporation.

That it further appears by the records herein that the original bill was filed in this cause on February 20, 1883, and decree ordering the sale of certain of the real estate of the said defendant corporation was entered and enrolled on February 23, 1886, to which decree your petitioners pray reference.

They also show that the jurisdiction of this court was not invoked in this cause for the purpose of enforcing any mortgage or other lien upon any of the property of the said Brown, Bonnell & Co., but solely to seize upon and sequester the corporate property of
133 such defendant, and to sell the same generally and divide the proceeds among creditors as entitled; all of which will more fully and at large appear by reference to the pleadings, orders, and decrees in this cause.

That on March 28, 1883, a supplemental bill was filed herein. On February 23, 1886, a decree was entered ordering the sale of a portion of the said corporate property, and that the money should be brought into court.

Petitioners show that the said original and sole defendant, Brown, Bonnell & Co., was a corporation created by and existing under the laws of the State of Ohio, and that, as thereto duly authorized by the statutes of that State applicable to and governing the franchises of such corporation, Dan. P. Eells, Charles A. Otis, William H. Harris, Eliza A. Witt, Emma Witt Harris, Howard P. Eells, Paige E. Newburry, John Hay and Samuel Mather, executors of the estate of Amasa Stone, deceased, and Dan. P. Eells, W. H. Harris, and Eliza A. Witt, as trustees, who were then and there the owners of one-fifth of the entire capital stock of the said Brown, Bonnell & Co., filed their petition in writing in the court of common pleas of Mahoning county, in the State of Ohio, being the county wherein the principal office of said Brown, Bonnell & Co. was situate, and in which the most of its property was, and wherein its business was conducted, wherein, according to the statute of said State of Ohio in such cases made and provided, the said stockholders prayed that by decree of said court the said corporation, Brown, Bonnell & Co., should be dissolved, its existence terminated, and its affairs wound up under the decrees and orders of said court and according to such statutes under which the said corporation was created.

134 Your petitioners file herewith a duly certified copy of the said application for the dissolution of said corporation, Brown, Bonnell & Co., and make the same a part hereof, and do aver that due notice was given according to the statutes of Ohio of the filing of such application and served upon the said Brown, Bonnell & Co., and that by reason thereof the said common pleas court of Mahoning county, Ohio, became by law duly vested with full and exclusive jurisdiction to adjudge the dissolution of Brown, Bonnell & Co. and sequester its property, ascertain its debts and liens, and sell its assets and divide the proceeds among its creditors as so adjudged by such State court.

Petitioners further show that the said Dan. Eells, Charles A. Otis, William H. Harris, John Hay and Samuel Mather, executors, so applying for the dissolution of the said corporation, Brown, Bonnell & Co., are intervenors and co-complainants in this cause, and also that over three-fourths in amount and number of the others, intervenors and co-complainants in this cause, have associated themselves together for the purpose of purchasing the corporate property for their benefit on a plan adopted and agreed to by them, and that such creditors by such committee and their counsel actively intervene in and took substantial charge and control of the said proceedings to dissolve the said corporation so pending as aforesaid in the said State court, and did conduct, prosecute, and press the same until on July 12, 1889, the said common pleas court of Mahoning county did enter a final order, judgment, or decree in the said proceedings pending before it, it being then and there a court of
135 competent jurisdiction so to do, wherein and whereby the said court did adjudge that the said corporation, Brown, Bonnell & Co., ought to be wound up and its assets distributed under the law and statutes of Ohio under which such corporation was created, and did further order and decree that the said Brown, Bonnell & Co. was dissolved and its corporate existence terminated; and did further adjudge, appoint, and decree one Hallett K. Taylor as receiver, who thereupon and thereby and by force of the statutes of Ohio became invested with all the estate and effects of said dissolved and defunct corporation, charged with the duties of holding, administering, and disposing of all such estate and effects under the statutes of Ohio and the orders of said common pleas court, and distributing the same among the creditors of such dissolved corporation according to the said statutes; all of which will more fully and at large appear by reference to the records and proceedings in such action for dissolution, all of which records and proceedings your petitioners stand ready to produce as this honorable court may direct.

Wherefore your petitioners pray that the dissolution of the said defendant, Brown, Bonnell & Co., be noted upon the record herein, and that this action be declared to abate by reason of the death of such sole defendant, and that the estate, rights, credits, and effects of such former corporation be ordered to be delivered over to the

receiver appointed by such decree of dissolution as aforesaid, and for all further proper relief.

LEADVILLE COAL CO.,
CHARLES S. WORDEN,
Petitioners.

HENRY CRAWFORD, *Solicitor.*

136 And afterwards, to wit, on Saturday, May 31st, 1890, an order was made in this cause, which is in the words and figures following, to wit:

LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & COMPANY. } Chancery, No. 4195.

Come now the Leadville Coal Company and Charles S. Worden and present their petition in writing suggesting the dissolution by judicial decree of the corporation Brown, Bonnell & Company and praying certain relief, and the court takes the said motion under advisement without prejudice to the rights of the petitioner.

137 And afterwards, to wit, on the 23rd day of July, 1890, the report of W. F. Goodspeed, special master commissioner, was filed in said cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL & COMPANY. } # 4195. In Equity.

Pursuant to the command of the writ of order of sale issued in this cause on the 3rd day of June, A. D. 1890, I did, on the 12th day of June, A. D. 1890, cause the premises therein described and ordered to — sold to be duly appraised, upon the oaths of Caleb B. Wick, Myron I. Arms, and James Neilson, three disinterested freeholders, resident within the said district, which appraisal I forthwith deposited in the office of the clerk of said court.

I also, on the 13th, 20th, and 27th days of June, 1890, and on the 3rd and 11th days of July, 1890, caused the property described in said order of sale so ordered to be sold by me to be duly advertised for sale at public auction in the Telegram, a newspaper of general circulation and printed in the city of Youngstown, Mahoning county, Ohio, a proof of publication of which is hereto attached and made a part of this report, said sale to take place at the north door of the Mahoning county court-house, at Youngstown, Ohio, at two o'clock p. m. on the 22nd day of July, A. D. 1890, and at the time
138 and place appointed for such sale I proceeded to offer said premises and property for sale at public auction, and then and there publicly sold and struck off the same to William McCreery,

Henry Tod, Charles C. Baldwin, and Cecil D. Hine, trustees, they being the highest and best bidders, for the sum of seven hundred thousand dollars ($700,000), and said sum being more than two-thirds of the appraised value thereof.

The said William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, trustees, as aforesaid, deposited with me the sum of twenty thousand dollars in cash, being the amount required by the decree herein to be paid as a first payment on the property so purchased, and which said sum of twenty thousand dollars I have paid to Martin W. Sanders, clerk of said court, to be deposited in the registry thereof.

Respectfully submitted.

(Signed) WILBUR F. GOODSPEED,
Special Master Commissioner.

THE STATE OF OHIO, *Mahoning County,* } *ss:*

Proof of Publication.

Before the undersigned authority personally appeared Fleet B. Kemp, for the publisher of the Telegram, a newspaper printed and of general circulation in the city of Youngstown, Mahoning county, Ohio, who, being duly sworn, on his oath deposes and says that the special master com. sale hereto attached was published in the Telegram for five times, to wit, on the 13th, 20th, and 27th days of June, A. D. 1890, and 3rd and 11th days of July, 1890.

FLEET B. KEMP.

139 Sworn to and subscribed before me this 22nd day of July, A. D. 1890.

[SEAL.] (Signed) O. T. COLLAR,
Notary Public.

Friday evening—Youngstown Telegram—June 13, 1890.

Special Master Commissioner's Sale.

In the Circuit Court of the United States in and for the Northern District of Ohio, *ss:*

LAKE SUPERIOR IRON COMPANY *et al.* *vs.* BROWN, BONNELL & Co. } In Equity. Cause No. 4195.

In pursuance to the command of an order of sale directed by the above court to me, as special master commissioner in the above-entitled cause, I will offer at public sale, at the north door of the Mahoning county court-house, at Youngstown, Ohio, at 2 o'clock p. m., on the 22d day of July, 1890, the following-described property, to wit:

Thirty-two parcels of land, all situated in the county of Mahoning, in the State of Ohio, and described and known respectively as follows:

First parcel.—Part of lot No. 10, in the east division of outlots in the original town plat of Youngstown, and is bounded as follows: Beginning at a post on the east line of the highway to Gibson's Fording and fifteen feet from common water mark in the Pennsylvania & Ohio canal, running thence south on the east line of said road sixteen (16) rods; thence east ten (10) rods; thence north sixteen (16) rods; thence west on the bank of said canal fifteen feet from common water mark ten (10) rods to the place of beginning, containing one acre of land.

The second parcel is also a part of said outlot No. 10, and is bounded as follows: Beginning at the northeast corner of the first parcel fifteen feet from the top-water line of the said canal, running thence south 18 rods and 23 links to the Mahoning river; thence eastwardly on the north bank of said river 18 rods and 12 links to a post near the outlet of a ditch; thence north parallel with the east line of the first parcel 16 rods and 21 links to the bank of said canal, and thence on the bank of said canal north 86½ degrees west 18 rods to the place of beginning, containing about two acres and seventeen perches.

The third parcel is bounded as follows: Beginning at low-water mark on the north bank of the Mahoning river and on the east line of the second parcel, on which stands the Falcon furnace, running thence north on said east line of the second parcel to a stake fifteen feet from the water in said canal; thence eastwardly along the bank of said canal, keeping fifteen feet from the water therein, to a point such that if a line were drawn from it southerly parallel with the first-named boundary line of this parcel so as to meet a line drawn eastwardly along the bank of said river from the place of beginning there would be contained within said four boundary lines one acre of ground, and said parcel has for its boundary lines the said four described lines.

The fourth parcel is known as part of lot No. 1, in the original survey of the south division of outlots in the town plat of Youngstown, and is bounded on the northerly side by the outer line of the towing path of said canal, on the easterly side by the highway or street leading to the Mahoning bridge, on the southerly side by the Mahoning river, on the westerly side by the west line of said lot No. 1, which is also the east line of lands formerly owned by the late William Rayen, deceased.

The fifth parcel is bounded as follows: Beginning at the northwest corner of a lot known as the Phœnix Furnace lot and at a point 15 feet south of the common water mark in said canal, thence running south 29½° west 8 chains and 35 links to low-water mark on the north bank of the Mahoning river; thence north 82¾° west 6 chains 7½ links; thence north 29¼° east 3 chains 30½ links; thence north 60¾° west 1 chain 89½ links; thence north 29¼° east 5 chains 30 links to an iron stake 15 feet south of top water line of said canal; thence south 73° east 1 chain 72 links; thence south 76¾° east 6 chains 4 links to the place of beginning, containing about $5\frac{921}{1000}$ acres.

The sixth parcel is bounded and described as follows: Beginning

at a point on the north line of the right of way and lands formerly belonging to the Pennsylvania & Ohio Canal Company where said line is met by the west line of the east half of lot No. 33 of Bane and Wick's subdivision of a part of the south division of outlots in the town plat of Youngstown, thence running northerly along said west line to the south line of the north half of said lot 33; thence westerly along said south line and parallel with Bane street to the west line of said lot 33; thence northerly along said west line of said lot 30 feet; thence easterly parallel with Bane street to the west line of the east half of said lot; thence northerly along said west line of said east half of said lot 12 feet; thence easterly, parallel with Bane street, to the east line of said lot 33; thence northerly along said east line of said lot to the south line of Bane street; thence easterly along the south line of Bane street to a point where said south line of Bane street would be met by the production southerly of the east line of Walnut street; thence northerly along the southerly production of said east line and along the east line of Walnut street to the northwest corner of lot 21 of said Bane and Wick's subdivision; thence easterly parallel with Bane street to the northeast corner of lot No. 16 of Bane and Wick's said subdivision; thence easterly along the south line of an alley to the west line of Presque Isle street; thence southerly along said west line last named to the north line of the right of way and lands formerly belonging to said canal company, and thence westerly along said north line of said right of way and lands last named to the place of beginning.

The seventh parcel is a part of lot No. 252 of the latest numbering of lots in said city, and is bounded as follows: Beginning at the southeast corner of said lot, thence running northerly along the east line thereof 18 feet; thence by a southwesterly course to a point on the south line of said lot distant westerly 45½ feet from the southeast corner of said lot; thence easterly along the south line of said lot 45½ feet to the place of beginning.

The eighth parcel is bounded as follows: Beginning at a point on the east line of Presque Isle street south 2½° west 26 links from the southwest corner of a lot conveyed to Brown, Bonnell & Co. by C. H. Andrews *et al.* by a deed which is recorded in the records of said county in vol. 20, at page 84 *et seq.*, thence running south 2½° west along said east line of said street 20 feet; thence south 81½° east 1 chain and 52 links; thence north 4° east 20 feet; thence north 81½° west 1 chain and 53 links to the place of beginning.

The ninth parcel is that part of lot No. 33 which was conveyed to Andrews & Hitchcock the 2d of July, 1860, by David Tod, and is bounded as follows: Beginning at a stake on a line between said lot and lot 32 1 chain and 68 links south 29½° west from the south line of Front street, thence running south 29½° west 95 links to the canal; thence up said canal 49 links; thence north 4° east 1 chain and 50 links; thence south 82¼° east 31 links; thence south 87¾° east 58 links to the place of beginning.

The tenth parcel is that part of lot No. 32 of the southeast division of outlots in the former village of Youngstown, which on the 12th of September, 1859, was conveyed by J. Warner to Andrews & Hitch-

cock, and is bounded as follows: Beginning at a stake where the west line of said lot 32 meets the berme bank of said canal, running thence north 29½° east 95 links; thence south 85° east 1 chain 23 links; thence south 28½° west 80 links; thence south 89° west 1 chain 30 links to the place of beginning.

The eleventh parcel is the south part of city lot No. 281 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presque Isle south 2½° west 2 chains 78¼ links from the southeast corner of Front and Presque Isle street, thence running along the east line of Presque Isle street south 2½° west 26 links; thence south 79¾° east 1 chain 53 links; thence north 4° east 21 links; thence north 77° west 1 chain 55 links to the place of beginning.

The twelfth parcel is known as city lot No. 280 of the latest numbering of lots in said city, and is bounded as follows: Beginning at a point on the east line of Presque Isle street south 21½° west 20 feet from the southwest corner of said lot 281, thence running along the east line of said street south 2½° west 65½ links to said canal; thence along the north side of high water in said canal south 83½° east 1 chain 50 links; thence north 4° east 52⅛ links; thence north 79⅜° west 1 chain 52 links to the place of beginning.

The thirteenth parcel is all the land which was conveyed on the 5th of December, 1863, by William Lindsay *et ux.* to the firm of Brown, Bonnell, & Co. by a deed which is recorded in said records in vol. 28, at page 233 *et seq.*, which deed is here referred to.

The fourteenth parcel is all the land ever owned or occupied by the Pennsylvania & Ohio Canal Company which lies between the centre of Crab creek on the east and the east side of what is known as Rany's mill on the west, including between said east and west boundaries all of the land ever occupied by berme bank, water channel, and towing path of said canal.

The fifteenth parcel comprises all the land conveyed to the firm of Brown, Bonnell & Co. by Henry Manning on the 26th of November, 1863, by a deed recorded in said records in vol. 19, at page 711, except such part of said lands as lie in the fourteenth parcel, and including all such rights as were conveyed by said Henry Manning in his said deed which is here referred to.

The fifteen parcels above named were conveyed on the 9th day of October, 1875, by Joseph H. Brown *et al.* to the party of the first part by a deed which is recorded in the records of said county in vol. 38, at page 606 *et seq.*, and is here referred to.

The sixteenth parcel is the west half of the south half of lot No. 33, in Bane and Wick's said subdivision, and also all of lot No. 32 in said subdivision except such part of said lot No. 32 as was sold by Almon Rany and wife and Bostwick Rany to Ellen Farrall, and except such part of said lot No. 32 as was conveyed by said Almon Rany and wife and Bostwick Rany to Ann McGraw by a deed which is recorded in the records of said county in vol. 19, at page 493. Said sixteenth parcel was conveyed to said corporation on the 9th of October, 1879, by H. O. Bonnell *et ux.* by a deed recorded in said records in vol. 45, at page 352.

The seventeenth parcel is the north half of the west half of lot No. 33 of said Bane and Wick's subdivision, excepting so much thereof as was conveyed away by George A. Young prior to the 24th of March, 1880. The part above conveyed of said north half was conveyed to said corporation by A. W. Jones *et ux.* the 24th of April, 1880, by a deed recorded in said records in vol. 47, at page 384, and this seventeenth parcel shall contain as a part thereof all the interest conveyed by said Jones in said deed to said corporation in any other part of said lot 33 of said subdivision.

The eighteenth parcel contains all that part of lot 275 of the latest enumeration in said city which was conveyed to said corporation by Mary Degen *et al.* the 24th of November, 1880, by a deed which is recorded in said records in vol. 48, at page 98, which deed is here referred to.

The nineteenth parcel is city lot No. 574 of the latest enumeration in said city, and was conveyed to said corporation the 3d of January, 1881, by John Rigney *et ux.* by deed recorded in the records of said county in vol. 45, at page 583.

The twentieth parcel is lot No. 572 of the latest enumeration in said city, and was conveyed the 8th of February, 1881, to said corporation by Gryan Kennedy *et al.* by a deed recorded in said records in vol. 49, at page 14.

The twenty-first parcel is lot No. 571 of the latest enumeration in said city, and was conveyed the 22d of February, 1881, to said corporation by E. M. Wilson, administrator of Patrick Corrigan, by a deed recorded in the said records in vol 48, at page 291.

The twenty-second parcel is the east half of lot No. 580 of the latest enumeration in said city, and was conveyed to said corporation the 19th of March, 1881, by Christian Ludd *et al.* by a deed recorded in said records in vol. 49, at page 93.

The twenty-third parcel is the northwest part of original lot No. 11, as shown by plat of village lots of Youngstown by Dr. Henry Manning, and recorded in Mahoning county records of plats, vol. 1, page 51, bounded as follows: Commencing at the northwest corner of said lot No. 11, thence north 74½° east 1 chain to lot owned by M. Fee, and known as city lot 582, new numbers; thence south 2 chains 7½ links; thence west 98 links to east line of original lot No. 12; thence north ½° east 2 chains 44½ links to the place of beginning, containing about one-fourth of an acre of land, and was conveyed the 1st of July, 1881, to said corporation by Thomas George *et ux.* by a deed recorded in said records in vol. 249, at page 393.

The twenty-fourth parcel is the west half of lot No. 580 of the latest enumeration in said city, and is the same land which was conveyed to said corporation the 1st of July, 1881, by Catherine Scanlon *et al.* by a deed recorded in said records in vol. 49, at page 392.

The twenty-fifth parcel is part of a large parcel of ground conveyed to John Stambaugh, trustee, by W. S. Parmlee, trustee, the 31st of July, 1871, by a deed recorded in said records in Deed Book 31, at page 273 *et seq.*, and is bounded and described as follows: Beginning on the east line of said larger parcel at the middle of a stone monument standing at the northeast corner of a piece of ground conveyed

by the Liberty and Vienna Railroad Company to the Ashtabula, Youngstown & Pittsburgh Railroad Company by a deed dated the 25th of August, 1871, and recorded in said records in vol. 33, at page 463 *et seq.*; thence running along the east line of said larger parcel conveyed as aforesaid by W. S. Parmelee, trustee, north 30° 28′ east about $398\frac{7}{10}$ feet to a stone monument at a point 15 feet southerly from the line of high-water mark on the south side of the Pennsylvania & Ohio canal; thence along a line parallel with and distant 15 feet southerly from the said line of high-water mark on the south side of said canal, north 49° 44′ west about $135\frac{3}{4}$ feet to a point which, measured along a line perpendicular to the east line of Market street, is distant easterly 150 feet from the east line of Market street; thence along a line parallel with and distant 150 feet easterly from the east line of Market street south 31° 20′ west about $*421\frac{2}{10}$ to the north line of said ground conveyed as aforesaid to the Ashtabula, Youngstown & Pittsburgh Railroad Company, and thence along the said north line of land conveyed to said railroad company south 59° 2′ east about $139\frac{7}{10}$ feet to the beginning, containing one acre and .28.388 of an acre of land, and is the same land conveyed to said corporation by John Stambaugh, trustee, *et al.* the 14th of July, 1881, by a deed recorded in said records in vol. 50, at page 66 *et seq.*

The twenty-sixth parcel is the east end of outlot No. 2, in said city, contains about three and .002 of an acre of land, and is the same land conveyed to said corporation 30th July, 1881, by Edwin Bell *et al.* by a deed recorded in said records in vol. 50, at page 63 *et seq.*, which deed is here referred to for a more particular description of said last-named parcel.

The twenty-seventh parcel is lot 576 of the latest enumeration in said city, and was conveyed to said corporation 16th November, 1881, by Mary Kelley by a deed recorded in said records in vol. 51, at page 34.

The twenty-eighth parcel is the east part of lot No. 575 of the latest enumeration in said city, and bounded as follows: Beginning at the northwest corner of lot No. 574, on the south line of the Pennsylvania and Ohio canal, thence in a westerly course parallel with the south line of said lot No. 575 25 feet; thence south parallel with the west line of lot No. 574 to the north line of lot No. 573; thence east along the north line of said lot No. 573 25 feet to the southwest corner of lot No. 574, and thence north along the west line of lot No. 574 to the place of beginning, and was conveyed to said corporation 25th November, 1881, by Mary Joice *et al.* by a deed recorded in said records in vol. 51, at page 63.

The twenty-ninth parcel is the west part of lot No. 575 of the latest enumeration of said city, situated on the south side of the Pennsylvania and Ohio canal, bounded on the north by the towing path of said canal, on the east by the east part of said lot No. 575, which said east part was conveyed by Charles Gillen to Mary Kelley; on the south by lots 573 and 577, and on the west by lot No. 576, and was conveyed to said corporation 2d December, 1881, by Michael Connors *et ux.* by a deed recorded in said records in vol. 51, at page 90.

The thirtieth parcel, situated in the city of Youngstown, county of Mahoning and State of Ohio, and known as being a part of city lot No. 257 (two hundred and fifty-seven), and is bounded as follows, to wit: Beginning at the northeast corner of Champion and Bane streets, in said city, which is also the southwest corner of said lot No. 257, thence south 60° east along the north line of Bane street (75) seventy-five feet to the east line of said lot No. 257; thence north 30° east along said line between said lots numbers 256 and 257 (100) one hundred feet; thence north 60° west, parallel with said north line of Bane street, (75) seventy-five feet to the east line of Champion street; thence south 30° west along said east line of Champion street (100) one hundred feet to the place of beginning, and being a part of the same premises conveyed by Henry Wick, Mary P. Wick, Hugh B. Wick, and Lucretia T. Wick to John Keef by a deed dated the 8th day of April, 1869, and by the said John Keef and Mary A. Keef, his wife, conveyed to Owen Evans by deed dated the 26th day of July, 1881, and by the said Owen Evans and Ann Evans, his wife, conveyed to Chauncey H. Andrews by ——, dated the 30th day of November, A. D. 1881, and being a part of lot No. (26) twenty-six of Bane & Wick's subdivision of a part of the southern division of outlots of the village of Youngstown, be the same more or less, but subject to all legal highways.

Thirty-first parcel.—All of the two lots and parcels of land lying and being situate in township of Poland, county of Mahoning, and State of Ohio, the first of which said two parcels is known as being a part of great lot number twenty-one (21) of the original survey of said township, and is bounded and described as follows, to wit: Beginning at a post in the line between lands formerly owned by W. H. McCombs and lands formerly owned by Thomas Struthers, north of and twenty-five (25) feet from the centre of the Lawrence railroad, thence by said line north 3.80° east twelve and twenty one-hundredths (12.20) chains to a post (now stone), corner; thence south 89° east twenty-three and thirty one-hundredths (23.30) chains to the center of the Mahoning river; thence south 42° east eight and eighty one-hundredths (8.80) chains; thence south 39½° west eleven and twenty one-hundredths (11.20) chains; thence north 30½° west eight and fifty-nine one-hundredths (8.59) chains; thence west nine and ninety one-hundredths (9.90) chains; thence south 39½° west six and forty-four one-hundredths (6.44) chains; thence north 50½° west two and eleven one-hundredths (2.11) chains to the place of beginning, containing twenty-nine and forty-nine one-hundredths (29.49) acres of land, more or less.

The second of said two parcels of land is known as being a part of great lot No. 11 (eleven) of the original survey of said township, and is bounded and described as follows, to wit: Beginning at a post on the line between the above-described parcel of land and land formerly owned by W. H. McCombs and thirty-three (33) feet north 39½° east from the centre line of the Lawrence railroad, thence north 32⅜° east five (5) chains and nine (9) links to a post; thence north 84¾° west one chain and seventy-eight (78) links; thence north 81⅛° west one (1) chain and fifty-four (54) links; thence north 77¼° west

one (1) chain and fifty (50) links; thence north 72¾° west one (1) chain and fifty (50) links; thence north 67¾° west one (1) chain and fifty (50) links; thence north 62¾° west two (2) chains and thirty (30) links; thence along the north line of the Lawrence railroad, being thirty-three (33) feet from the centre line of said railroad, south 50½° east twelve (12) chains and forty-six (46) links to the place of beginning, containing two and three one-hundredths (2.03) acres of land, more or less, and being the same land which was conveyed by W. H. McCombs and wife to Thomas Struthers and brother by deed dated 13th of April, 1869, and recorded in Mahoning county Records, in vol. 26, at page 727 *et seq.*

The grantors also give and grant to said grantee, its successors and assigns, all the rights and privileges that they may have or own in the right of way upon which is constructed the switch railroad track connecting the above-described lands and running over a part of the same with the Pittsburgh & Lake Erie Railroad Company's main line, reserving, however, the right at any time to and for them or any of them or their heirs and assigns to make connection with the said switch at any place where it runs on or over their own or other adjacent lands not hereby conveyed.

Thirty-second parcel, situated in the city of Youngstown, county of Mahoning, and State of Ohio, and known as part of what is now called outlot No. 6 according to the latest numbering of lots in said city.—Said lot of land was formerly known as part of outlot No. 10, in the east division of the original outlots of said city, and bounded as follows, to wit: Commencing at a point on the east side of Presque Isle street distant southerly sixteen (16) rods from a point on said east side of said street fifteen (15) feet south from what was common water mark in the Pennsylvania and Ohio canal (which point is now marked by an iron pin located and driven by James Mackey, surveyor), thence south with the east side of Presque Isle street sixty-seven feet ten and one-half inches (67 ft. 10½ inches) to a point four feet north of the north rail of the Ashtabula, Youngstown & Pittsburgh railroad track; thence north seventy-eight degrees east one hundred and seventy-two and one-twelfth (172 1/12) feet to a point; thence north on a line parallel with the east line of Presque Isle street fourteen feet nine and one-half—(14 ft. 9½ in.) to a point that is in the southeast corner of a certain lot of ground conveyed September 3, 1852, by Charles Grute to James H. Ford by deed recorded in Mahoning county Record of Deeds, vol. 7, p. 183; thence westerly on the southern boundary line of said lot conveyed by Grute to Ford a distance of ten (10) rods to the place of beginning, with all appurtenances thereunto belonging, together with all and singular the buildings, structures, boilers, engines, fixed and movable machinery, fixtures, tools, implements, locomotives, cars, railway track and appliances, office furniture and fixtures, patterns, duplicate rolls, castings, lumber, and all other personal property belonging or pertaining to the said real estate and used in connection therewith in carrying on the business of manufacturing now or formerly carried on upon the said premises and now upon the same, connected therewith, or pertaining thereto.

Also:

1. Eight hundred shares of stock in the Mahoning Coal Company, a corporation organized under the laws of the State of Ohio.

2. A two-thirds interest in the partnership known as Erskine & Co., doing business in the city of Youngstown, Ohio.

3. Five leases of coal lands in Butler county, Pennsylvania, standing in the name of Ralph J. Wick, trustee, and made by John M. and Sarah J. Chambers, Alex'r Black, William Christie, James Kelley, and Walter Currie, and embracing together 392 acres of land.

4. The right to remove sand and gravel from a certain tract of land described as follows: A tract or lot of land situated in Coitsville township, in the county of Mahoning and State of Ohio, being part of great lot No. 8 in the original survey of said township, and bounded as follows: On the north by the centre line of the McGuffey road; on the east by lands owned on the 8th day of May, 1863, by John Brownlee; on the south by lands owned at the same date by said Brownlee, Aaron C. Sears, and Isaac Kimmel; on the west by lands owned at the same date by David Pothous, being the farm upon which the said Alfred C. Sears formerly resided, containing 38 and $\frac{8}{100}$ acres, being the same land conveyed to Catherine Hurst by Brown, Bonnell & Co. January 20, 1865, and recorded in Book 21, pages 265 and 266, of Mahoning county records of deeds.

The foregoing-described property will be sold in one lot, and is appraised at $962,137.00.

WILBUR F. GOODSPEED,
Special Master Commissioner.

140 And afterwards, to wit, on August 22nd, 1890, the exceptions of Chas. S. Worden *et al.* to report of sale were filed in said cause; which exceptions are in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY and Others
vs.
BROWN, BONNELL & COMPANY. } In Equity.

Creditors' Exceptions to Master Commissioner's Report of Sale.

The Leadville Coal Company and Charles S. Worden, creditors of Brown, Bonnell & Co., in behalf of themselves and such other creditors as may choose to join herein, object and except to the report of the master commissioner, Goodspeed, filed herein on July 23d, 1890, as to the sale of the property under the decree of February 23d, 1886, and ask the court to reject such report and refuse to confirm such sale.

These exceptants for cause show—

First. That the alleged appraisal of the property was illegal and void, in that it was not made in the actual view, as required by law.

Second. That the alleged appraisal of the property was illegal and void, in that Caleb B. Wick, one of the appraisers, was nearly related and akin to several of the creditors parties hereto, and therefore incompetent.

Third. That the alleged appraisal of the property sold was illegal and void, in that James Neilson, one of the appraisers, is and was at the date in the employ of C. B. Andrews, one of the creditors and party hereto.

141 Fourth. That the alleged appraisal of the property sold was irregular, improper, illegal, and void, in that the decree expressly required the property appraised and to be sold in connection with the pending and unfinished contract of the receiver, and that such contracts were of very great value in addition to the tangible property itself, and that the master commissioner and appraisers improperly ignored that provision of the decree and only appraised actual tangible property, and did not include in their appraisal or take into account in any way the actual cash value of such pending contracts, which were to pass by such purchase, which contracts were of the then actual cash value of over $200,000.00, and passed by such sale.

Fifth. That at the time of such appraisal and sale the said receiver had pending contracts for iron ore and supplies, and had paid out in actual cash over $100,000.00 for ore and supplies, which has not even yet been delivered, the right to receive which ore would pass by the purchase, and the same was not appraised or taken into account in any way nor stated in the advertisement or notice of sale.

Sixth. That the sale was for a grossly inadequate price, as shown by the report of the receiver.

Seventh. At and before the said sale the receiver, under instruction of court, gave notice that any purchaser of the property then offered for sale would have the right to buy from the receiver

142 certain real estate purchased by and conveyed to him from Ames, Bell & Co. on notice to the receiver of an election to buy, and after the accepted bid of such purchasers they did notify the receiver of their election to buy such real estate, and now claim to have been duly vested with such right, although no such option of purchasing other land was included in the decree or notice of sale or appraisal.

Eighth. That the purchase of the property was made by William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine as a committee and trustees representing divers creditors, who, by an agreement with a portion of the stockholders of said Brown, Bonnell & Co., entered into a contract to become the purchasers of its property and obtain all its assets, a copy whereof is herewith filed and made part of these exceptions as Exhibit A, and that on January 11th, 1884, the said committee caused an action to be instituted in the common pleas court of Mahoning county, Ohio, in the names of the stockholders who were parties to such agreement and others in their interest, to procure a dissolution of the said corporation, Brown, Bonnell & Co., under the statutes of Ohio, under which it was organized, and thereafter the said State court of Ohio, being then and there a competent court of jurisdiction, did on July 12th, 1889, enter a final degree dissolving such corporation and appointed Hallett K. Taylor a receiver of all its property and assets, and such receiver became

the statutory successor of such dissolved corporation, and such
143 State court became by virtue of the laws of Ohio vested with paramount and exclusive jurisdiction to sell the assets of such dissolved corporation and ascertain the creditors thereof and distribute the proceeds of such assets among them, and by virtue of said laws the judgment or decree by confession herein on February 23d, 1886, having been obtained after the filing of such petition for dissolution, is by force of the statute superseded and no longer of any force or effect, and no title can now pass under such decree or sale. The exceptants file a certified copy of such decree or dissolution herewith.

Ninth. That this action abated on the dissolution of such corporation by judicial decree, and said Taylor, the receiver, who now under the statute is vested with the title to all the corporate assets, has not been made a party to this suit in any way.

The exceptents on this Aug. 27, 1890, ask leave to amend these exceptions by adding thereto the following:

Tenth. For that the portion of the property situated in Pennsylvania, being 5 coal leases standing in the name of Ralph J. Wick, trustee, cannot now be legally sold and conveyed, because said Wick is not a party hereto as trustee and said property is out of the territorial jurisdiction.

(Signed) HENRY CRAWFORD, *Solicitor.*

144 EXHIBIT A.

Whereas at a meeting of the creditors of Brown, Bonnell and Company, held at the city of Youngstown, Ohio, this 29th day of April, 1884, for the purpose of uniting upon some plan by which further litigation over the assets of said corporation may be obviated and by which the interest of said creditors in the effects of said corporation may be adjusted and protected, a certain compromise plan was approved of by said meeting, which plan was reduced to writing and is hereunto attached, marked "Exhibit A," and made a part of this instrument:

Now, therefore, in order to facilitate and insure the carrying of said plan into execution, we, the subscribers hereto, creditors of said Brown, Bonnell & Company, do by these presents constitute and appoint James Westerman, William McCreery, C. D. Hine, Henry Tod, and C. C. Baldwin our true and lawful attorneys and the attorneys for each one of us; and we do hereby authorize and empower our said attorneys, or a majority of them, for us and in our names and places to do any or all of the following matters and things, to wit:

1. To subscribe in our several names and for each one of us such amounts of the capital stock of the proposed corporation as may belong to each one of us to take under the terms of said plan.

2. To waive on our behalf and for each of us all such notices as we, as such stockholders, may under the statute be entitled to have
145 of the first meeting of the stockholders of the projected corporation, and to agree and fix upon the time and place of holding said meeting; to represent and vote for each one of us at

the election of directors of said proposed corporation and upon all such other matters as may come before said stockholders' meeting: Provided, however, that such of the subscribers to said stock as shall personally attend said meeting or be represented thereat by special proxy may act and vote in person or by such special proxy and to perform all such acts as it may be proper to perform in order to perfect the organization of said corporation.

3. To assign, transfer, and set over to said proposed corporation, or to some person or persons to be selected as trustees for that purpose, accordingly as our said attorneys shall think the better way, the whole or any part of our several claims against Brown, Bonnell & Company as and whenever our said attorneys shall think it proper to be done for the purpose of carrying out the details of said plan; and the odd fractional part of an hundred dollars which may remain of our several claims over and above the number of even hundreds we authorize our said attorneys, for the sake of convenience, to sell and dispose of for fifty per cent. thereof in cash.

4. Our said attorneys are further authorized, in case they shall deem it expedient to do so, to purchase any and all of the property of said Brown, Bonnell & Company now in the hands or subject to the control of the receiver, Mr. Fayette Brown, and as trustees to take and receive conveyances thereof, and thereafter, upon
146 the full organization of said contemplated corporation, to convey to it any or all of the property so acquired, in accordance with the terms of said plan, and also to receive from and receipt to said receiver for the dividends which he may pay on our several claims, and to receive and to distribute to us the cash, notes, and stocks coming to us under said plan.

5. A majority of the persons who are constituted attorneys by this paper shall have the power to perform each and all of the acts specified in this instrument; and in all cases where a difference of opinion shall arise among said attorneys as to the course to be pursued the opinion of the majority shall prevail and be decisive.

And in consideration of the sum of one dollar received by the subscribers hereto from the said James Westerman, William McCreery, C. D. Hine, Henry Tod, and C. C. Baldwin, the receipt whereof is hereby acknowledged, and in further consideration of the mutual signing of this paper by said several creditors, the said subscribers hereby agree with said attorneys and with each other as follows, to wit:

1. That the powers which are hereby vested in the above-named persons, as attorneys and trustees, shall be, and the same are hereby, made irrevocable, and shall endure until all the details of the aforesaid compromise plan shall have been carried out, or until said powers shall be revoked by a writing, to — signed by a majority in number and value of the creditors who shall have signed this paper.

2. That each of the said creditors subscribing this paper
147 will, upon request of said attorneys, place the evidences of his claim against Brown, Bonnell & Company in the hands of said attorneys, formally assigned to them, to be held and controlled by them as trustees in accordance with the terms of this paper and of said compromise plan.

3. That while it is expected that the costs and expenses which may be incurred by said attorneys and trustees in effecting the objects of their appointment will eventually be borne by the proposed corporation, nevertheless the subscribers hereto, each in proportion to the amount of his claim, hereby guarantee unto said attorneys the payment of said costs and expenses.

Witness our several hands hereto this 29th day of April, A. D. 1884.

(Signed) SHARON N. BANK.
JAMES WESTERMAN, *Pres't.*
WM. HAMILTON HARRIS.
DAN. P. EELLS.
CITIZENS' NAT. B'K OF PITTSBURGH,
By GEO. A. BERRY, *P't.*
THE COM'L NAT. BANK OF CLEVELAND,
By DAN. P. EELLS, *Pres't.*
CHAS. A. OTIS.
MONONGAHELA NATIONAL BANK, BROWNSVILLE.
WM. SEDWICK.
FARMERS' DEPOSIT & SAVINGS BANK, POLAND, O.,
Per R. L. WALKER, *P't.*
GIRARD SAVINGS BANK,
By W. B. SAMPSON, *P't.*
HUBBARD NAT'L BANK.
R. H. JEWELL, *Cashier.*
ESTATE OF AMASA STONE, *Dec'd,*
Per SAMUEL MATHER, *Executor.*
TAYLOR IRON CO.,
Per SAMUEL MATHER, *Pres't.*
THE NATIONAL BANK OF FAYETTE CO., PA.,
Per JNO. K. EWING, *Pres't.*
148 JOHN I. WILLIAMS.
FIRST NATIONAL BANK OF YOUNGSTOWN, O.,
By R. McCURDY, *P't.*
SECOND NATIONAL, YOUNGSTOWN,
By HENRY TOD.
IMPERIAL COAL CO.,
By WM. McCREERY, *P't.*
HARTLEY & MARSHALL,
By W. McCREERY (*Authorized*).
WICK BROS. & CO.
H. PARK.
L. LANE.
OTIS IRON AND STEEL CO.,
By C. A. OTIS, *Pres't.*
IMPORTERS' AND TRADERS' NAT. BANK OF NEW YORK,
By H. C. BALDWIN, *Att'y.*

1. Organize a new company, to be called the Brown-Bonnell Iron Company, with a capital stock of twelve hundred thousand dollars, for the purchase and operation of the works and property of Brown, Bonnell & Company, said corporation to have a directory of seven members.

2. The stockholders in Cleveland of Brown, Bonnell & Company who hold claims secured by mortgage to take all their said claims in stock of new company; amount, about $162,500.

3. All others creditors who are willing to do so to take sixty per cent. of their claims in stock, and the remaining forty per cent. to be paid as follows:

10 per cent. of balance in cash on purchase of property by new company.

10 per cent. of balance in note of new company, one year
149 from date, with six per cent. interest, payable semi-annually.

25 per cent. of balance in note of new company, two years, with interest, payable semi-annually.

25 per cent. of balance in note of new company, three years, with interest, payable semi-annually.

30 per cent. of balance in note of new company, four years, with interest, payable semi-annually.

4. The above-named notes to be paid ratably by the company earlier than by their terms they are due if, in judgment of the directors, this can be done without prejudice to the credit or business of the company, and in no event are any dividends to be paid to stockholders until all said notes are paid.

5. Two hundred thousand dollars to be paid by D. P. Eells, W. H. Harris, C. A. Otis, S. Mather, and J. Hay, payable twenty-five per cent. when required for purposes named in the next article, or if not required for these purposes, then upon purchase of the property for the new company; twenty-five per cent. in four months; twenty-five per cent. in eight months, and twenty-five per cent. in twelve months, with interest on the deferred payments at six per cent. from date of purchase of the property, for which they are to receive stock in the new company.

6. Creditors who prefer shall be paid fifty per cent. of their claims in cash in full upon assignment of their claims for the benefit of the new company; interest to be computed as in article 8.

150 7. All claims against Brown, Bonnell & Company acquired by the new company as above to be assigned, without cancellation, to a trustee or trustees for the benefit of the new company without any prejudice to any right of recovery which may attach to such claims against stockholders of Brown, Bonnell & Company on their personal liability as such stockholders and without prejudice to any other legal rights; but the stockholders of Brown, Bonnell & Company who pay in the two hundred thousand dollars to the company, and those to whom they have assigned their stock (including D. P. Eells, Paige E. Newberry, Eliza A. Witt, and D. P. Eells *et al.*, trustees), to be indemnified and held harmless by said new company in consideration of the payment by them of said two hundred thousand dollars and of their taking stock for the amount

of their claims, which are secured by the pledge of the mortgage bonds of said company. The entire amount of the stock of Brown, Bonnell & Company, the holders of which are hereby agreed to be indemnified against their liability as said stockholders, being $300,000.

8. Seventy-five per cent. in amount of the entire indebtedness of Brown, Bonnell & Company to be secured as assenting to this proposition before it shall become binding. Interest on all claims from date of maturity to the maturity of the claim last maturing to be allowed, and no interest on any claim after that time.

9. The capital stock of the new company to be issued not to exceed one million dollars, except by a vote of the stockholders at a meeting called for that purpose

151 10. Any creditor may take stock in the new company for the entire amount of his claim if he shall so elect.

152 And afterwards, to wit, on the 22nd day of August, 1890, exceptions to report of sale were filed in said cause, which are in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

JACKSON IRON CO. *et al.*
vs.
BROWN, BONNELL & CO. } In Equity.

Exceptions to Master's Report of Sale.

Come now George M. Ayer, who is a stockholder of record of Brown, Bonnell & Co. to the amount of $25,000.00, and Amy G. Ayer, who is a like stockholder to the amount of $50,000.00, and say that the said corporation was dissolved and ceased to exist by decree of the Mahoning common pleas court on July 12th, 1889, and say—

First. They join in and adopt as their own all and singular the exceptions filed herein by the Leadville Coal Company and Charles S. Worden.

Second. They also claim that to allow such purchase to be confirmed to such committee under the agreement set forth in Exhibit A will be a fraud on all the stockholders not parties thereto.

(Signed) HENRY CRAWFORD, *Solicitor.*

153 And afterwards, to wit, on the 27th day of August, 1890, affidavit of H. Crawford was filed in said cause, which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON CO.
vs.
BROWN, BONNELL & CO.

U. S. AMERICA,
Northern District of Ohio, } ss:

Henry Crawford on oath says he is solicitor for the Leadville Coal Company and Charles S. Worden, creditor of the former corporation known as Brown, Bonnell & Co.; that he was in Youngstown on July 22nd, 1890, the date when the master commissioner offered the property for sale under the decree herein.

Affiant knows Caleb B. Wick, one of the appraisers herein, and personally conversed with him on that day. Said Wick is the nephew of Paul Wick and Hugh B. Wick and uncle of John C. Wick, who compose the firm of Wick Brothers & Co., who are creditors in the decree herein. Said Wick is also the nephew of Henry Wick, of Cleveland, another creditor herein. Said appraiser Wick, on request of the affiant, informed him fully as to the method of making such appraisement of property sold, and stated that the appraisers only made actual view of the plant at Youngstown and the Strothers furnace, and fixed the value of all the other property without actual view, and had no information concerning the
154 pending contracts of receiver, and did not consider the value or fact of any such contracts in making that appraisal of the real estate.

Affiant was informed by the said Wick and others and states that James Neilson, another of the appraisers, is an employé of Andrew Brothers, one of the members of which firm is Chauncey H. Andrews, who is the senior partner of Andrews & Hitchcock, who are creditors in the decree herein.

On the said day the affiant also had a conversation with Fayette Brown, the receiver, who gave him a copy of the balance-sheet of the receiver's account up to July 1, 1890, and stated that he had pending ore contracts and had paid out in actual cash over $100,000.00 for ore which had not been delivered on such July 22, 1890.

The said receiver also, at and prior to such sale by the master commissioner, publicly announced that the purchaser thereat would also have an option to buy certain real estate bought of Armes, Bell & Co. at the original cost thereof if the purchaser should notify the receiver that he elected to so take the property, and after the bid had been accepted by the master commissioner the purchaser did notify the receiver that *they* elected to buy the other said real estate at such price. The property so sold by the receiver was not included in the decree or notice of sale or the appraisal.

Affiant knows Ralph J. Wick, who holds the legal title to the leasehold interests of the Pennsylvania property described in the decree. Said Wick is in full life and is a citizen and resident of Ohio, and has been such citizen since January 1, 1883.

155 Affiant knows C. D. Hine, one of the purchasers, who is an attorney at Youngstown, Ohio. He has been the chief and active attorney in prosecuting the action to dissolve the corporation Brown, Bonnell & Co., and has repeatedly and in open court claimed that such proceedings to dissolve were being prosecuted at the desire and in the interest of the creditors of such creditors of the corporation represented by the committee of which he is a member.

Affiant caused public notice to be given prior to such offer by the master commissioner that the corporation Brown, Bonnell & Co. had been dissolved and no longer existed, and that all its property had been divested by the decree of the common pleas court of Mahoning county, O., and the said reported bidders were present and heard such notice, and bid with full knowledge of such facts.

(Signed) HENRY CRAWFORD.

Sworn to before me and subscribed in my presence this 27th day of August, A. D. 1890.

(Signed) M. W. SANDERS,
U. S. Com'r, N. D. O.

156 And afterwards, to wit, on the 22nd day of August, 1890, the application of Dan. P. Eells *et al.* for dissolution of Brown, Bonnell & Co. was filed in this cause, which is in the words and figures following, to wit:

Appearance Docket No. 10, Court of Common Pleas, Mahoning County, Ohio, page 13065.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Co., an Incorporated Company Organized under the Laws of Ohio.

R. P. Ranney, Joel W. Tyler, A. St. J. Newbury, Johnson & Clarke, Henry Crawford, A. W. Jones.

Dissolution of Corporation.

January term, 1884.

Jan. 11th, 1884.—Petition filed.
Jan. 14th, 1884.—Alternative order. See J. 26, p. 28.
Jan. 14th, 1884.—Precipe filed and copy of order issued to sheriff.
Jan. 17th, 1884.—Leave to amend petition *instanter*. Leave to W. H. Harris to become party and file amendment to petition *instanter*. J. 26, p. 40.
Jan. 17th, 1884.—Amendment to petition filed.
Jan. 17th, 1884.—Copy of order returned and filed, endorsed:

THE STATE OF OHIO, } ss:
Mahoning County, }

She'ff fees, $2.50.

Received this order January 14th, A. D. 1884, and on the 14th day of January, A. D. 1884, I personally served D. B. Chambers, secretary of the corporation of Brown, Bonnell & Company and in charge of the office of the said Brown, Bonnell & Co., by delivering to him a true and certified copy thereof; and on the 15th day of January, A. D. 1884, I personally served F. H. Matthews, vice-president of said corporation of Brown, Bonnell & Co., by delivering to him a like copy thereof, after having
157 failed to find the president of said corporation within my county.

GEORGE W. LODWICK, *Sheriff*,
By E. B. WALKER, *Deputy Sheriff*.

Jan. 17th, 1884.—Plaintiffs have leave to change 100 to 300 in allegation of shares of Dan. P. Eells. W. H. Harris allowed to become party and file above amendment to petition *instanter*. J. 26, p. 40.

Jan. 19th, 1884.—Time to show cause, etc., extended to Jan. 23rd. J. 26, p. 44.

Jan. 23rd, 1884.—Answer filed.

Jan. 28th, 1884.—Reply of petitioners to answer of officers filed.

Jan. 28th, 1884.—Affidavit of D. B. Chambers filed.

Jan. 28th, 1884.—Affidavit of Fayette Brown filed.

Jan. 29th, 1884.—Answer withdrawn by leave. Officers ordered to make statements and file with clerk by Feb. 25th. See J. 26, p. 71.

Jan. 29th, 1884.—Precipe filed.

Feb. 2nd, 1884.—Order to file statements issued.

Feb. 2nd, 1884.—Petitioners required to give bail for costs within ten days. J. 26, p. 81.

Feb. 6th, 1884.—Bail for costs filed.

Feb. 11th, 1884.—Order to file statements returned and filed, endorsed:

Received this writ February 2nd, A. D. 1884, and I personally served the within-named Frank Matthews, president; Ralph J. Wick, secretary, and Frank B. Williams, vice-president, of said corporation of Brown, Bonnell & Co., by delivering to each of them a true and certified copy thereof.

GEORGE W. LODWICK, *Sheriff*,
By E. B. WALKER, *Deputy Sheriff*.
Fees $3.15.

Feb. 23rd, 1884.—Time for filing statements extended to Feb. 29th, 1884. J. 26, p. 139.

Feb. 29th, 1884.—Inventory, etc., filed by officers of B., B. & Co.

158

March 1st, 1884.—Referred to Theodore Hall, Esq., of Ashtabula, O. Hearing to be had on June 23rd, 1884, at court-house, in Youngstown, O., J. 26, p. 182, and continued.

May term, 1884.

July 8th.—Proof of publication of notice of hearing filed, and continued.
September term, 1884. Continued.
1885.—January term, 1885. Continued.
May term, 1885. Continued.
September term, 1885. Continued.
1886.—January term, 1886. Continued.
May term, 1886. Continued.
September term, 1886. Continued.
1887.—January term, 1887. Continued.
May term, 1887. Continued.
September term, 1887. Continued.
1888.—January term, 1888. Continued.
May term, 1888. Continued.
September term, 1888. Continued.

1889.

March 25th.—(Jan. term, 1889.) Report of referee filed.
January term, 1889. Continued.

May 9th.—(May term.) Motion to dismiss application filed.

July 12th.—Hearing to court on report of referee and motion to dismiss application of petitioners overruled. Brown, Bonnell & Co. except for various findings. See entry. Court orders and decrees that said corporation of B., B. & Co. be dissolved. Court approved and confirmed report of referee, and referee allowed $480.00. Stenographer allowed $92.81, and ordered to be taxed in costs. H. K. Taylor appointed receiver, and ordered to enter into bond in sum of $50,000.00. Brown, Bonnell & Co. excepts and gives notice of appeal; bond fixed $2,000.00.

159 Brown, Bonnell & Co. except and have 30 days to file bill of exceptions. J. 37, p. 229.

1889.

Aug. 19th.—Appeal bond filed.

Journal Entries.

J. 26, p. 28, Jan'y term, Jan'y 14, '84.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio. 13065, 531.

Application having been made herein for an order upon the officers of Brown, Bonnell & Company requiring said officers to file in

this court and case the inventories, accounts, and statements hereinafter mentioned, it is hereby ordered by the court that the president, vice-president, directors, secretary, and treasurer of Brown, Bonnell & Company, on or before the 19th day of January, 1884, show cause why they should not be ordered to file in this court and cause—

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of said Brown, Bonnell & Co., and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock of the said corporation, specifying the names of the stockholders, their places of residence, the number of shares belonging to each, the amount paid on such shares respectively, and the amount, if any, still due thereon.

3rd. A statement of all the incumbrances upon the property of said corporation and of all engagements by it which have
160 not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known that they so state the fact and the sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness.

And that notice hereof be given to the said officers of said corporation by service of a copy of this order by leaving same at the office of said corporation with the person in charge of said office.

Plaintiff excepts to refusal of court to grant peremptory order and to filing in its stead the alternate order.

J. 26, p. 40, Jan'y term, Jan'y 18, '84.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company under the Laws of Ohio. 13065, 531.

Upon motion petitioners have leave to change 100 to 300 in allegation of shares owned by Dan. P. Eells in the petition contained, and W. H. Harris has leave to become party and to file amendment to petition *instanter* and to adopt therein the allegations of the petition without restating the same.

J. 26, p. 44, Jan'y term, Jan'y 19, '84.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company under the Laws of Ohio. 13065, 531.

On motion of the officers of Brown, Bonnell & Co., and for
161 good cause shown, it is ordered that the time allowed the said officers to show cause why they should not be required to make certain reports to this court be, and the same hereby is, extended to Wednesday, the 23rd day of January, 1884.

J. 26, p. 71, Jan'y term.

In the Matter of the Application for the Dissolution of Brown, Bonnell & Co. 13065, 531.

Civil action.

On motion of the officers of said Brown, Bonnell & Company they have leave to withdraw their answer and showing of cause, which is done, and, the said officers of said Brown, Bonnell & Co. failing to show any cause why they should not be required to make and file inventories, statements, and accounts in the former order of this court fully set out, it is ordered by the court that said officers make and file with the clerk of this court, on or before the 25th day of February, 1884, inventories, statements, and accounts as follows, to wit:

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock of said corporation, specifying the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in on such shares respectively, and the amount still due thereon.

3rd. A statement of all the incumbrances on the property of
162 the corporation and of all engagements entered into by it which have not been fully canceled or satisfied, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known the fact to be so stated, and the sum owing to each creditor, the nature of each debt or demand, and the time, cause, and consideration of such indebtedness.

The court does not pass upon the truth of the allegations of the petition.

J. 26, p. 81, Jan'y term, Feb. 2, '84.

In the Matter of the Application of DAN. P. EELLS *et al.* for the Dissolution of Brown, Bonnell & Co., etc. 13065, 531.

On motion of the officers of Brown, Bonnell & Co., the petitioners herein are required to furnish good and sufficient bail for costs herein within ten days.

J. 26, p. 139, Jan'y term, Feb'y 23, '84.

In the Matter of the Application of DAN. P. EELLS *et al.* for Dissolution of Brown, Bonnell & Co., an Incorporated, etc. 13065, 531.

On the application of the officers of Brown, Bonnell & Co., the time heretofore allowed them wherein to file the statements required to be filed is extended to Friday, the 29th day of February, A. D. 1884.

J. 26, p. 182, Jan'y term, M'ch 1, '84.

In the Matter of the Application of DAN. P. EELLS *et al.* for the Dissolution of Brown, Bonnell & Co. 13065, 531.

163 Upon application of the petitioners herein, by their attorneys, and upon good cause shown, this cause is referred to Theodore Hall, Esq., of Ashtabula, O., as referee to take testimony and make report herein as provided in sections 5654, 5655, and 5673 of the Revised Statutes of Ohio and other statutes relating to this matter.

And it is ordered that all persons interested in the corporation of Brown, Bonnell & Company show cause, if any they have, why said corporation should not be dissolved before said referee, at the courthouse, at Youngstown, Ohio, on the 23rd day of June, 1884, and said hearing shall be on said referee's own adjournments from time to time. All parties interested have leave to file pleadings, setting up claims or liens to the date of said hearing, and said Brown, Bonnell & Co. or its officers have leave to file answer to said application by June 8th.

J. 31, p. 382, May term, May 2, '87.

In Re Application of D. P. EELLS *et al.* for the Dissolution of Brown, Bonnell & Co., a Corporation, etc. 13065, 41.

This cause is continued.

J. 37, p. 229, May term, July 12, '89.

In Re Application of D. P. EELLS for the Dissolution of Brown, Bonnell & Co., etc. 10, 13065.

Dissolution.

And now comes the corporation of Brown, Bonnell & Co., by Henry Crawford, Esq., its attorney. The petitioners herein also appeared by Hine and Clarke, their attorneys. Thereupon this
164 cause came on to be heard and was heard by the court upon the objections of Brown, Bonnell & Co. to the report which was filed herein by Theodore Hall, referee, and the motion of said Brown, Bonnell & Co. to dismiss the application of petitioners. On consideration whereof the court find that said objections and motion are not well taken and overrules the same, to which said corporation excepts.

Thereupon this cause came on further to be heard upon the motion of the petitioners herein for an order confirming the report of said referee and dissolving said corporation, and the same was argued by the counsel aforesaid for the respective parties and was submitted to the court.

Upon consideration whereof the court, having carefully examined the proceedings which were had by and before said referee and the report made by him, find that said proceedings have been had and said report made in all respects according to law and the orders of

this court, and the said proceedings and report are hereby approved and confirmed by the court, and the said referee is allowed the sum of $480.00 for his fee and expenses herein, and the same, together with the sum of $92.81, fees charged by the stenographer for recording testimony taken before said referee, are ordered to be taxed as part of the costs of this proceeding; and the court further find that each and all the allegations which are contained in the petition filed herein, praying for the dissolution of said Brown, Bonnell & Co., are true; and the court further find that said Brown, Bonnell & Co. is, and at the time of the commencement of these dissolution proceedings was, insolvent.

165 And the court being of the opinion that said corporation ought to be dissolved, as prayed for in said petition, it is therefore ordered, decreed; and adjudged by the court that the said corporation of Brown, Bonnell & Co. be, and the same is hereby, dissolved, and the court hereby appoints Hallett K. Taylor, of Youngstown, Ohio, to be receiver of the estate and effects of said corporation, and as such receiver he shall have all the powers and perform all the duties which are prescribed by the statute in such case made and provided; but inasmuch as it appears to the court that the estate and effects of said Brown, Bonnell & Co. are at the present time in the hands of a receiver appointed by and acting under the orders of the circuit court of the United States for the northern district of Ohio, it is ordered that the receiver hereby appointed shall not interfere with the possession of the receiver appointed by said Federal court of the effects and assets of said corporation.

Said H. K. Taylor is ordered to enter into an undertaking as such receiver in the sum of fifty thousand dollars, payable to the State of Ohio, conditioned for the faithful discharge of his duties as such receiver, to be approved by the clerk of the court, and for the due accounting for all money received by him; to all of which findings and orders said Brown, Bonnell & Co., by its counsel, excepts and give notice of their intention to appeal to the circuit court, the bond for which appeal is by this court fixed at $2,000.00. Brown, Bonnell & Co. except and have 30 days allowed from adjournment of court in which to prepare, have allowed, signed, and filed a bill of exceptions which is to be made a part of the record in this case.

166 *Petition for Dissolution of Corporation.*

THE STATE OF OHIO, *Mahoning County,* } ss:

In Common Pleas.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio.

To the honorable the judge of the court of common pleas within and for the county of Mahoning, in the State of Ohio:

Your petitioners, Dan. P. Eells, Charles A. Otis, Eliza A. Witt,

Emma Witt Harris, Mary Witt Eells, Howard P. Eells, Paige E. Newberry, John Hay and Samuel Mather, executors of the estate of Amasa Stone, deceased, and Dan. P. Eells, W. H. Harris, and Eliza A. Witt, trustees, respectfully represent as follows:

That Brown, Bonnell & Company is a corporation organized and existing under the laws of the State of Ohio for manufacturing purposes, and that the principal place of conducting the business of said corporation is situated in the said county of Mahoning, in the State of Ohio.

That your petitioners, John Hay and Samuel Mather, are the duly appointed, qualified, and acting executors of Amasa Stone, deceased.

Your petitioners further say that the said corporation, Brown, Bonnell & Company, has a capital stock of one million five hundred thousand dollars, divided into fifteen thousand shares of one hundred dollars each, all of which is fully paid up.

That your petitioners are the owners of one-fifth of the
167 paid-up capital stock of said corporation and respectively own the number of shares and amounts of said capital stock hereinafter specified:

Dan. P. Eells, 300 shares	$30,000 00
Charles A. Otis, 500 shares	50,000 00
Eliza A. Witt, 200 shares	20,000 00
Emma Witt Harris, 500 shares	50,000 00
Mary Witt Eells, 200 shares	20,000 00
Howard P. Eells, 100 shares	10,000 00
Paige E. Newberry, 100 shares	10,000 00
Dan. P. Eells, W. H. Harris, and Eliza A. Witt, trustees, 300 shares	30,000 00
John Hay and Samuel Mather, executors, 1,000 shares	100,000 00

being a total of 3,000 shares, of the value of three hundred thousand dollars.

Your petitioners further say that for two out of the three last preceding years next before the filing of this petition the net earnings of the said corporation have not been sufficient to pay, in good faith, an annual dividend of six per centum upon the paid-up capital stock of the said corporation over and above the salaries and expenses authorized by the by-laws and regulations of said corporation, and your petitioners therefore desire a dissolution of the said corporation.

Your petitioners further say that the said corporation is insolvent; that a dissolution thereof will be beneficial to the stockholders thereof and not injurious to the public interest; that the objects of said corporation have wholly failed and been entirely aban-
168 doned, and that it is impracticable to accomplish such objects.

The petitioners further say that the circuit court of the United States for the northern district of Ohio has heretofore appointed Fayette Brown receiver of the property and effects of said corporation, and that said court, by its said receiver, is now in possession of all the property, rights, and credits of said corporation and is pro-

ceeding to administer and distribute the same among the creditors thereof.

The petitioners further say that this honorable court has also appointed Frank H. Matthews as receiver of said corporation, subject to the rights of said Fayette Brown, receiver.

Your petitioners further say that Dan. P. Eells, William H. Harris, and Charles A. Otis are duly elected, qualified, and acting directors of said corporation.

In consideration of the premises your petitioners pray the judgment of this court dissolving said corporation, Brown, Bonnell & Company.

R. P. RANNEY,
JOEL W. TYLER,
A. ST. JOHN NEWBERRY, AND
JOHNSON & CLARKE,
Petitioners' Attorneys.

THE STATE OF OHIO, } ss:
Mahoning County, }

John H. Clarke, being by me, the undersigned authority, first duly sworn according to law, says he is one of the attorneys of the within-named petitioners, duly authorized in the premises; that the said petitioners are all non-residents of Mahoning county
169 and are now absent therefrom, and that the facts stated in the foregoing petition are true.

JOHN H. CLARKE.

Sworn to before me and subscribed by the said John H. Clarke in my presence this 11th day of January, 1884.

HENRY C. CASSIDY,
[NOTARIAL SEAL.] *Notary Public.*

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio.

Application having been made herein for an order upon the officers of Brown, Bonnell & Company requiring said officers to file in this court and case the inventories, accounts, and statements hereinafter mentioned, it is hereby ordered by the court that the president, vice-president, directors, secretary, and treasurer of Brown, Bonnell & Company, on or before the 19th day of January, 1884, show cause why they should not be ordered to file in this court and cause—

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of said Brown, Bonnell & Co., and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock of the said corporation, specifying the names of the stockholders, their places of residence, the number of shares belonging to each, the amount paid in on such shares respectively, and the amount, if any, still due thereon.

3rd. A statement of all the incumbrances upon the property of said corporation and of all engagements by it which
170 have not been fully satisfied or cancelled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known that they so state the fact and the sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness, and that notice hereof be given to the said officers of said corporation by service of a copy of this order by leaving same at the office of said corporation with the person in charge of said office.

THE STATE OF OHIO, } ss:
Mahoning County, }

I, Lloyd Fording, clerk of the court of common pleas in and for said county, do hereby certify that the above and foregoing is a true and correct copy of the order made by the said court on this 14th day of January, A. D. 1884, in the above-entitled cause and entered on the journal of said court.

Witness my hand and the seal of said court, at Youngstown, this 14th day of January, A. D. 1884.

[SEAL.] LLOYD FORDING, *Clerk.*

THE STATE OF OHIO, } ss:
Mahoning County, }

Received this order January 14th, A. D. 1884, and on the 14th day of January, A. D. 1884, I personally served D. B. Chambers, secretary of the corporation of Brown, Bonnell & Company and in charge of the general office of said Brown, Bonnell & Co., by delivering to him a true and certified copy thereof; and on the 15th day of January, A. D. 1884, I personally served T. H. Matthews, vice-president of said corporation of Brown, Bonnell & Co., by delivering to
171 him a like copy thereof, after having failed to find the president of said corporation within my county.

GEORGE W. LODWICK, *She'ff,*
By E. B. WALKER, *Dep. She'ff.*

She'ff fees, $2.50.

Amendment to Petition for Dissolution of Corporation.

THE STATE OF OHIO, } ss:
Mahoning County, }

In Common Pleas.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio.

To the honorable the judge of the court of common pleas within and for the county of Mahoning, in the State of Ohio:

W. H. Harris, made a party plaintiff to this cause upon his own

motion, by the leave of the court first had, allowing the filing of this his amendment to the petition in this action, respectfully represents—

That Brown, Bonnell & Company is a corporation organized and existing under the laws of the State of Ohio for manufacturing purposes, and that the principal place of conducting the business of said corporation is situate in said county of Mahoning and State of Ohio.

That the said corporation, Brown, Bonnell & Company, has a capital stock of one million five hundred thousand dollars, divided into fifteen thousand shares of one hundred dollars each, all of which is fully paid up.

That this petitioner, W. H. Harris, is the owner of five hundred shares of the paid-up capital stock of said corporation, Brown,
172 Bonnell & Co., of the value of fifty thousand dollars ($50,000.00).

That for two out of the three years last past the net earnings of said corporation have not been sufficient to pay, in good faith, an annual dividend of six per centum upon the paid-up capital stock of said corporation over and above the salaries and expenses authorized by the by-laws and regulations of said corporation, and that he thereupon, as such party plaintiff, desires a dissolution of said corporation.

This plaintiff, further pleading, adopts all of the allegations of the petition in this cause filed as if the same were herein fully rewritten and joins with the plaintiffs in said petition named in praying the judgment of this court dissolving said corporation, Brown, Bonnell & Company.

R. P. RANNEY,
J. W. TYLER,
A. S. P. NEWBERRY, AND
JOHNSON AND CLARKE,
For Petitioners.

THE STATE OF OHIO, } ss:
Mahoning County, }

John H. Clarke, being duly sworn, says he is one of the attorneys for the plaintiff, W. H. Harris, duly authorized, and that the facts in the foregoing amendment to the petition are true.

JOHN H. CLARKE.

Sworn to before me and subscribed by the said John H. Clarke in my presence this 17th day of Jan'y, 1884.

[SEAL.] A. O. FORDING, *Dep. Clerk.*

173 STATE OF OHIO, } ss:
Mahoning County, }

I, Z. P. Curry, clerk of the court of common pleas of Mahoning county, Ohio, do hereby certify that the pleading marked "answer," filed herein January 23rd, A. D. 1884, was withdrawn by

leave of court January 29th, A. D. 1884, and that said pleading is not on file in this office.

Witness my hand and the seal of said court, at Youngstown, this 15th day of October, A. D. 1889.

Z. P. CURRY, *Clerk*,
[SEAL.] By F. E. PROBST, *Dep. Clerk*.

THE STATE OF OHIO, } ss:
Mahoning County, }

In the Matter of the Application of DAN. P. EELLS and Others to Dissolve the Corporation of Brown, Bonnell & Co.

The petitioners herein now come and represent to this honorable court that the officers of said corporation, Brown, Bonnell & Co., have not shown any good and sufficient cause why they should not be required to file in this court the inventories, accounts, and statements by law required and in the order of this court herein fully described, and for cause thereof say—

That the said Fayette Brown, receiver, now has in his possession, in the former office of Brown, Bonnell & Co., in the city of Youngstown, Ohio, all the books, vouchers, and papers referring to or containing statements of the business or property of said corporation which are necessary to enable said officers to make and file a full, just, and true inventory of all the estate, both real and personal, in law and equity, of the said corporation, and of all the books,
174 vouchers, and securities relating thereto, and a statement of all the incumbrances on the property of the corporation, and of all engagements entered into by it which have not been fully satisfied and cancelled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known the fact to be so stated, and the sum owing to each creditor, the value of each debt or demand, and the true cause and consideration of each indebtedness.

And that such Fayette Brown, receiver, now permits and has at all times permitted and been ready and willing to permit said officers to examine and inspect and copy such books, vouchers, and papers and to examine and inventory all the property of such corporation to the full extent necessary to make the inventories and statements aforesaid, but that such officers have never made any application or demand for leave to examine such books, vouchers, and papers or to inventory such property, and have made no effort to comply with the requirements of law or the order of this court.

That the said Fayette Brown, receiver, has the books and papers of such corporation necessary to enable such officers to make and file in this court a full, just, and true account to the capital stock of the corporation, specifying the names of the stockholders, their residence, when known, the number of shares belonging to each, the amount paid in upon such shares respectively, and the amount still due thereon.

That the various statements and allegations contained in the paper filed herein by such officers purporting to show cause why

they should not be required to file such accounts, inventories,
175 and statements, even if true, which petitioners protest that many of them are not, do not constitute any good or sufficient cause why said officers should not be required to file the same; and said petitioners aver that such officers are able and have at all times been able to make and file the said inventories, accounts, and statements and ought to be required so to do.

And said petitioners further say that they admit the appointment of said Fayette Brown as receiver; that he is in the full possession of all the property of the corporation and is administering the same; and they aver that the jurisdiction of the circuit court of the United States in appointing said receiver was full, complete, and rightful and for the best interests of the stockholders and creditors of such corporation; and they deny all of the allegations of said officers in their answer herein contained not hereinbefore admitted or denied.

R. P. RANNEY,
J. W. TYLER,
A. S. J. NEWBERRY,
JOHN H. CLARKE,
Att'ys for Petitioners.

THE STATE OF OHIO, } *ss:*
Mahoning County, }

Paige E. Newberry, being duly sworn, says that she is one of the petitioners in this action, and that all the statements and allegations hereinbefore contained are true, as she verily believes.

PAIGE E. NEWBERRY.

Sworn to before me by the said Paige E. Newberry and by her subscribed in my presence this 25th day of January, A. D. 1884.

[SEAL.]

H. FORD,
Notary Public.

176 *Precipe.*

THE STATE OF OHIO, } *ss:*
Mahoning County, }

In Common Pleas.

In the Matter of the Application of DAN. P. EELLS *et al.* for the Dissolution of Brown, Bonnell & Co., an Incorporated Company.

Issue to the sheriff of Mahoning county a certified copy of the order made by the court in the above-entitled action on January 28th, 1884, and direct him to serve the same upon F. H. Matthews, president of Brown, Bonnell & Co.; upon Ralph J. Wick, secretary and treasurer of said Brown, Bonnell & Co., and upon Frank Williams, vice-president of said Brown, Bonnell & Co., and make return according to law.

JOHNSON & CLARKE,
Att'ys for Petitioners.

THE STATE OF OHIO, } ss:
Mahoning County, }

To the sheriff of said county, Greeting:

Whereas, at a term of the court of common pleas held at Youngstown, in and for said county, on the 7th day of January, A. D. 1884, in the matter of the application of D. P. Eells *et al.* for the dissolution of Brown, Bonnell & Co., it was ordered, adjudged, and decreed as follows, to wit: On motion of the officers of said Brown, Bonnell & Company they have leave to withdraw their answer and showing of cause, which is done; and the said officers of said Brown, Bonnell & Co. failing to show any cause why they should not be required to make and file inventories, statements, and accounts in the former order of this court fully set out, it was ordered by the court that said officers make and file with the clerk of this
177 court on or before the 25th day of February, 1884, inventories, statements, and accounts as follows, to wit:

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock of said corporation, specifying the names of the stockholders, their residence, the number of shares belonging to each, the amount paid in on such shares respectively, and the amount still due thereon.

3rd. A statement of all the incumbrances on the property of the corporation and of all engagements entered into by it which have not been fully cancelled or satisfied, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known the fact to be so stated, and the sum owing to each creditor, the nature of each debt or demand, and the true cause or consideration of such indebtedness.

The court does not pass upon the truth of the allegations of the petition.

You are therefore commanded to serve the foregoing order upon F. H. Matthews, president of Brown, Bonnell & Co.; upon Ralph J. Wick, secretary and treasurer of said Brown, Bonnell & Co., and upon Frank Williams, vice-president of said Brown, Bonnell & Co., and to make return of this order according to law.

Witness my hand and the seal of said court this 2nd day of February, 1884.

LLOYD FORDING, *Clerk,*
[SEAL.] By A. O. FORDING, *Deputy.*

178 THE STATE OF OHIO, } ss:
Mahoning County, }

Received this writ February 2nd, A. D. 1884, and I personally served the within-named Frank Matthews, president; Ralph J. Wick, secretary, and Frank B. Williams, vice-president, of said corporation of Brown, Bonnell & Co., by delivering to each of them a true and certified copy thereof.

GEORGE LODWICK, *She'ff,*
By E. B. WALKER, *Deputy.*

Service	$ 60
Cop.	1 50
Mileage	80
Ret.	25
	$3 15

Newspaper Publication.

Legal notice.

In the Common Pleas Court, Mahoning Co., O.

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio. No. 13065.

Notice is hereby given that on the first day of March, 1884, the court of common pleas of Mahoning county, O., entered an order upon its journal that the above-entitled action be referred to Theodore Hall, Esq., of Ashtabula, Ohio, to take testimony and make report therein as provided in sections 5654, 5655, 5673, and other sections of the Revised Statutes of Ohio relating to the matters therein involved. It was further ordered by said court that all persons interested in the corporation of Brown, Bonnell & Company show cause, if any they have, why said corporation should not be dissolved, before said referee, at the court-house, at Youngstown, Ohio, on the 23rd day of June, 1884, and that the hearing
179 before said referee should be upon his own adjournments. Leave was also granted all persons interested in said corporation to file pleadings setting up claims or liens until the time of said hearing.

Proof of Publication.

THE STATE OF OHIO, } ss:
Mahoning County, }

Before me, the undersigned attorney in and for Mahoning county, personally appeared Fleet B. Kemp, who, being duly sworn according to law, says that he is book-keeper for the publishers of the Youngstown News-Register; that the annexed advertisement was published in the Youngstown News-Register, a newspaper printed and of general circulation in said Mahoning county, Ohio, once a week for three consecutive weeks prior to the 23rd day of June, 1884, and that the first insertion was on the 5th day of June, A. D. 1884, and that each insertion was on the same day of the week.

FLEET B. KEMP.

Sworn to before me by the said Fleet B. Kemp and subscribed by him in my presence this 7th day of July, 1884.

GEORGE E. ROSE,
Notary Public.

[SEAL.]

Advertisement ------ ----	$6 00
Affidavit----------	40
Total -------- ----	6 40

In Mahoning County Court of Common Pleas.

In the Matter of the Application of DAN. P. EELLS and Others for Dissolution of Brown, Bonnell & Co.

Report of Theodore Hall, Referee.

MONDAY, *June* 23*rd*, 1884.

I attended at the court-house, in the city of Youngstown, and was first duly sworn as referee in said case.

180 Thereupon J. H. Clarke, Esq., appeared on behalf of the petitioners and Asa W. Jones, Esq., on behalf of the corporation Brown, Bonnell & Co., and by mutual consent the hearing was continued until Wednesday, August 13th, 1884, at 10 o'clock a. m., at the court-house, in the city of Youngstown.

WEDNESDAY, *August* 13*th*, 1884.

By consent of parties the hearing was continued until September 2nd, 1884, at 10 o'clock a. m.

SEPTEMBER 2ND, 1884.

Parties appeared at 10 o'clock a. m., and by consent of parties adjourned until 1 o'clock p. m.

1 O'CLOCK P. M.

The petitioners appeared by Johnson and Clarke, their attorneys.

The Brown, Bonnell & Co. appeared by Asa W. Jones and Henry Crawford, its attorneys, and the hearing began.

B. O. Eddy, Esq., official stenographer, was, by consent and request of parties, directed to report the evidence.

The petitioners called and introduced as witnesses J. N. Taylor and R. J. Wick.

Adjourned until September 3rd, 1884, at 9 o'clock a. m.

WEDNESDAY, *September* 3*rd*, 1884.

The same parties appeared, and hearing resumed and continued through the day.

Witnesses examined were J. N. Taylor, D. V. Chambers, W. B. Pollock, Henry Tod, Robert McCurdy, D. V. Chambers, John Stambaugh, A. B. Cornell, H. O. Bonnell.

Adjourned to Thursday, September 4th, 9 a. m.

THURSDAY, *September* 4*th*—9 a. m.

Hearing resumed.

Witnesses examined, R. J. Wick.

By consent hearing continued until Thursday, October 16th, 10 a. m.

181 THURSDAY, *October 16th*—10 a. m.

Hearing resumed.

Witnesses examined: C. A. Otis, Andrew Milligan, A. St. John Newberry, and A. O. Fording.

Hearing continued by consent until May 21st, 1885.

MAY 21ST, 1885.

Messrs. Hine and Clarke appeared for the petitioners.

The following witnesses were examined: J. F. Taylor, J. B. Chambers, and John I. Williams.

By consent hearing was continued to Tuesday, June 2nd, 1885, at one o'clock p. m.

TUESDAY, *June 2nd*, 1885.

Parties appeared. Thereupon the petitioners rested. The corporation called as witnesses J. W. Taylor and Asa W. Jones.

Mr. Crawford moved to dismiss on account of deficiency in the number of petitioners. Overruled.

Both parties rested, and the parties proceeded to argue the case.

The arguments not being finished, adjourned until June 3rd, at 11 o'clock a. m.

JUNE 3RD—11 a. m.

Argument resumed and concluded and matter submitted.

The order to me is to take testimony and make report herein, as provided in sec. 5654, 5655, 5673 Revised Statutes and other statutes relating to this matter.

Sec. 5655 requires the referee to "hear the allegations and proofs of the parties, take testimony in relation thereto, and with all convenient speed report the same to the court, with a statement of the property, effects, debts, credits, and engagements of the corporation and of all other matters and things pertaining to its affairs."

Sec. 5673 provides: "When the stockholders owning one-
182 fifth or more in amount of the paid-up stock of a corporation organized for manufacturing or mining file their petition containing a statement that for two out of the three last preceding years the net earnings of the corporation have not been sufficient to pay in good faith an annual dividend of six per cent. per annum upon the paid-up capital stock of the corporation over and above the salaries and expenses authorized by the by-laws and regulations of the corporation, and that they therefore desire a dissolution of the corporation, the court shall make an order requiring the officers of the corporation, within a reasonable time, to file in court the inventories, accounts, and statements required by sec. 5652, and upon the filing thereof the court shall proceed as in sec. 5654."

The inventories, accounts, and statements thus required are—

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock, if any, of the corporation, specifying the names of the stockholders, their resi-

Advertisement	$6 00
Affidavit	40
Total	6 40

In Mahoning County Court of Common Pleas.

In the Matter of the Application of DAN. P. EELLS and Others for Dissolution of Brown, Bonnell & Co.

Report of Theodore Hall, Referee.

MONDAY, *June* 23*rd*, 1884.

I attended at the court-house, in the city of Youngstown, and was first duly sworn as referee in said case.

180 Thereupon J. H. Clarke, Esq., appeared on behalf of the petitioners and Asa W. Jones, Esq., on behalf of the corporation Brown, Bonnell & Co., and by mutual consent the hearing was continued until Wednesday, August 13th, 1884, at 10 o'clock a. m., at the court-house, in the city of Youngstown.

WEDNESDAY, *August* 13*th*, 1884.

By consent of parties the hearing was continued until September 2nd, 1884, at 10 o'clock a. m.

SEPTEMBER 2ND, 1884.

Parties appeared at 10 o'clock a. m., and by consent of parties adjourned until 1 o'clock p. m.

1 O'CLOCK P. M.

The petitioners appeared by Johnson and Clarke, their attorneys.

The Brown, Bonnell & Co. appeared by Asa W. Jones and Henry Crawford, its attorneys, and the hearing began.

B. O. Eddy, Esq., official stenographer, was, by consent and request of parties, directed to report the evidence.

The petitioners called and introduced as witnesses J. N. Taylor and R. J. Wick.

Adjourned until September 3rd, 1884, at 9 o'clock a. m.

WEDNESDAY, *September* 3*rd*, 1884.

The same parties appeared, and hearing resumed and continued through the day.

Witnesses examined were J. N. Taylor, D. V. Chambers, W. B. Pollock, Henry Tod, Robert McCurdy, D. V. Chambers, John Stambaugh, A. B. Cornell, H. O. Bonnell.

Adjourned to Thursday, September 4th, 9 a. m.

THURSDAY, *September* 4*th*—9 a. m.

Hearing resumed.

Witnesses examined, R. J. Wick.

By consent hearing continued until Thursday, October 16th, 10 a. m.

181 THURSDAY, *October* 16*th*—10 a. m.

Hearing resumed.

Witnesses examined: C. A. Otis, Andrew Milligan, A. St. John Newberry, and A. O. Fording.

Hearing continued by consent until May 21st, 1885.

MAY 21ST, 1885.

Messrs. Hine and Clarke appeared for the petitioners.

The following witnesses were examined: J. F. Taylor, J. B. Chambers, and John I. Williams.

By consent hearing was continued to Tuesday, June 2nd, 1885, at one o'clock p. m.

TUESDAY, *June* 2*nd*, 1885.

Parties appeared. Thereupon the petitioners rested. The corporation called as witnesses J. W. Taylor and Asa W. Jones.

Mr. Crawford moved to dismiss on account of deficiency in the number of petitioners. Overruled.

Both parties rested, and the parties proceeded to argue the case.

The arguments not being finished, adjourned until June 3rd, at 11 o'clock a. m.

JUNE 3RD—11 a. m.

Argument resumed and concluded and matter submitted.

The order to me is to take testimony and make report herein, as provided in sec. 5654, 5655, 5673 Revised Statutes and other statutes relating to this matter.

Sec. 5655 requires the referee to "hear the allegations and proofs of the parties, take testimony in relation thereto, and with all convenient speed report the same to the court, with a statement of the property, effects, debts, credits, and engagements of the corporation and of all other matters and things pertaining to its affairs."

Sec. 5673 provides: "When the stockholders owning one-
182 fifth or more in amount of the paid-up stock of a corporation organized for manufacturing or mining file their petition containing a statement that for two out of the three last preceding years the net earnings of the corporation have not been sufficient to pay in good faith an annual dividend of six per cent. per annum upon the paid-up capital stock of the corporation over and above the salaries and expenses authorized by the by-laws and regulations of the corporation, and that they therefore desire a dissolution of the corporation, the court shall make an order requiring the officers of the corporation, within a reasonable time, to file in court the inventories, accounts, and statements required by sec. 5652, and upon the filing thereof the court shall proceed as in sec. 5654."

The inventories, accounts, and statements thus required are—

1st. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of the corporation, and of all the books, vouchers, and securities relating thereto.

2nd. A full, just, and true account of the capital stock, if any, of the corporation, specifying the names of the stockholders, their resi-

dences, when known, the number of shares belonging to each, the amount paid in upon such shares respect*fully*, and the amount still due thereon.

3rd. A statement of all the incumbrances on the property of the corporation and of all engagements entered into by it which
183 have not been fully satisfied or cancelled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known the fact to be *as* stated, and the sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness.

The order was made and notice given as provided in said section. No pleadings were filed, so far as I know, except the petition. A list of stockholders was filed by the corporation; also an inventory showing the assets and liabilities of the corporation, but not the value of the assets.

From the evidence produced before me I find—

1st. That the following is a true list of the stockholders of said company, showing the amount held by each, and that the same has been fully paid up:

Name.	Residence.	No. of shares.	Amount.
George M. Ayer	Harvard, Ill.	250	25,000 00
Mrs. Amy G. Ayer	" "	500	50,000 00
H. J. Higgins	Chicago, "	835	83,500 00
Marie Louise Ayer	" "	150	15,000 00
Mrs H. C. Ayer	New York city	150	15,000 00
A. W. Jones	Youngstown, Ohio	5	500 00
Chas. A. Otis	Cleveland, Ohio	500	50,000 00
F. H. Matthews	Youngstown, Ohio	200	20,000 00
A. M. Witherall	Ft. Douglas, Utah	100	10,000 00
Amasa Stone	Deceased	1,000	100,000 00
W. H. Harris	Cleveland, Ohio	500	50,000 00
184 D. P. Eells	Cleveland, Ohio	300	30,000 00
Mrs. Eliza Witt	Cleveland, Ohio	200	20,000 00
D. P. Eells *et al.*, trustee	" "	300	30,000 00
Mrs. Paige E. Newbury	Cleveland, "	100	10,000 00
Howard P. Eells	Cleveland, Ohio	100	10,000 00
Harriet L. Ayer	New York city	50	5,000 00
I. C. Knickerbocker	Chicago, Ill.	50	5,000 00
Jno. J. Williams	Youngstown, Ohio	20	2,000 00
R. J. Wick	" "	10	1,000 00
Levi Lake	Chicago, Ill.	168	16,800 00
H. C. Ayer	Marseilles, France	9,003	900,300 00
Mrs. S. A. Copeland	Baltimore, Md.	500	50,000 00
F. B. Williams, m.	Youngstown, Ohio	9	900 00
		15,000	$1,500,000 00

2nd. That the entire capital stock paid up is $1,500,000.00, and that the petitioners own one-fifth of that amount.

3rd. That the property and effects of said company consist of—

a. Real estate situated in Mahoning county, Ohio, a schedule of

which is filed herewith and forms a part of the inventory filed by the company, which I find from the evidence was of the value of $475,000.00.

At the date of the filing of the petition herein the company was the owner of the Mahoning Coke Company, Limited, at Dunbar, Pennsylvania, but I further find that in a case pending in the court of common pleas of Fayette county, Pennsylvania, wherein Joseph Home & Company, for use of Joseph Caldwell, were plain-
185 tiffs and The Mahoning Coke Company, Limited, was defendant, all the coke company's property was levied on May 15th, 1883, and sold upon execution July 26th, 1884, as appears from certified transcript, marked "Referee's Exhibit C." That property is therefore not included in the statement of assets, real or personal.

b. Personal property, a condensed statement of which is filed herewith and marked "Referee's Exhibit D," which I find to be of the value of $565,999.50. I therefore find the total property and assets to be $1,040,999.50.

4th. The liabilities of said company I find to be, at the date of the filing of the petition (not including capital stock), $1,283,228.98, but that since the filing of the petition, to wit, on July 26, '84, there was realized from the sale of the Fayette county, Pa., property and applied on the judgment of the Fayette County Bank the sum of $24,164.59.

Excess of liabilities over assets	$242,229 48
Excess of liabilities over assets after credits	218,064 89

A statement of the liabilities is herewith filed and forms part of the inventory filed by the company—Exhibit "B."

5th. I further find that on the 20th day of February, A. D. 1883, the Lake Superior Iron Company and the Negaunee Concentrating Company commenced an action in chancery, in the circuit court of the United States for the northern district of Ohio, against Brown, Bonnell & Company, alleging, among other things, the insolvency of the company, and praying for the appointment of a receiver to take charge of the property and assets of the defendant, Brown,
186 Bonnell & Company, and for all other and further relief.

That on the same day, the defendant having entered its appearance and waived notice, Fayette Brown, Esq., was by said court appointed receiver of said company.

Said order and all other orders in said case appear in full in the certified transcript marked "Referee's Exhibit D."

That said receiver qualified on said day and has ever since been managing and operating the business of said company.

That on the 28th day of March, A. D. 1883, said petitioners filed their supplemental bill in said court, making new parties, praying for appointment of a special master to ascertain the priorities of liens, for notice to all known creditors of Brown, Bonnell & Company, the presentation of all claims, for the sale of all the property of the company, and in case of deficiency of assets to enforce the individual liability of stockholders.

That on the 23rd day of April, 1883, an order was made by said court "that all creditors of said defendant, Brown, Bonnell & Company, shall — or before sixty days from the entry of this order file their several claims in the clerk's office of this court by petition, in which shall be stated the amount and nature of such claims," and providing for notice; that on the 17th day of July, 1883, A. J. Ricks was appointed such commissioner "to hear and determine the rights of the several creditors of the defendant who have filed their claims and to ascertain what is justly due from said de-
187 & 188 fendant to each and every creditor who has filed his claim and to adjudge and marshal the liens of said creditors and the priorities thereof," &c.

Said master in his report audited and allowed claims to the amount of $1,320,649.92. A complete transcript of the record in that case was introduced in evidence before me, and is filed herewith and marked "Referee's Exhibit D."

I further find that at the September term of this court, A. D. 1883, on the 22nd day of November, defendant, Brown, Bonnell & Company, confessed judgment against said company amounting in the aggregate to the sum of $570,928.56, and on the 10th day of December, 1883, amounting to the sum of $142,281.97, and on the 15th day of December, 1883, amounting to $5,119.20.

Executions were at once issued, but no levies made.

Detailed lists of these judgments and of the returns upon the writs are herewith returned and appear on pages 84 to 154 of testimony herewith returned.

I further find that on the 17 day of December, A. D. 1883, the Sharon National Bank of Sharon, Pennsylvania, the Second National Bank of Youngstown, Ohio, the Briar Hill Iron and Coal Company, the Greenville National Bank of Greenville, Pennsylvania, and Lucien C. Jones filed their petition in this court against Brown, Bonnell & Company, alleging the recovery of said several judgments, the issue and return of said executions, that the property is in the possession of Fayette Brown, and that all of said judgments are liens upon said 29 tracts of land hereinbefore mentioned,
189 and that the defendant, Brown, Bonnell & Company, refuses to apply its property to the payment of said judgments, and praying for the appointment of a receiver to take possession of all of the property of said Brown, Bonnell & Company, subject to the rights of any other receiver hereto appointed.

On the same day this court made an order in said case appointing Frank H. Matthews receiver. A copy of the petition and order in full will be found on page 196 of the evidence taken before me and herewith returned. No further proceedings appear to have been had in said case.

From the facts stated I find that the Brown, Bonnell & Company is insolvent.

6th. Upon the question as to whether for two out of the three last preceding years the net earnings have been sufficient to pay an annual dividend of six per cent. on the paid-up capital I find that

the paid-up capital is $1,500,000.00, requiring to pay an annual dividend of six per cent. $90,000.00.

The years to be considered are the years 1881, 1882, and 1883.

As to 1881.—The exhibit on balance-sheet introduced for the year 1881 shows an apparent net gain or profit of $42,185.84, "Referee's Exhibit F."

Without considering whether the gain or profit is real, it falls short of being sufficient to pay a dividend of three per cent.

190 As to 1882.—The exhibit on balance-sheet introduced shows a net loss of $22,335.83, "Referee's Exhibit G."

As to 1883.—The exhibit on balance-sheet shows a loss for the year of $82,773.81, "Referee's Exhibit H."

Hence that I find that for two out of the three years next preceding the filing of the petition the net earnings have not been sufficient to pay a dividend of six per cent. on the paid-up capital stock of the corporation.

It appears from the evidence that the petitioning stockholders are all solvent; that Herbert C. Ayer, who owns 9,003 shares of the stock, of the par value of $900,300.00, nearly two-thirds thereof, from the facts, found that it would be beneficial to the stockholders that the corporation should be dissolved and its affairs closed up, and I am unable to find that such dissolution would be injurious to the public interest.

All of the testimony taken before is herewith returned and marked "Evidence taken before me—

"THEODORE HALL, *Referee.*"

Respectfully submitted.

THEODORE HALL, *Referee.*

Referee's time and expenses:

10 days attendance hearing case	$300 00
Expenses, same time, hotel	20 00
5 days reading testimony and preparing report	150 00
P'd type-writer copying minute book and report	10 00
	$480 00

Stenographer's fees, $92.81.

191 REFEREE'S EXHIBIT D.

Statement of Personal Property.

Merchandise inventory January 1st, 1884	$258,660 57
800 shares stock in Mahoning Coal Company	2,600 00
One-half interest in Lawrence Ore Company	10,000 00
Two-thirds interest in Erskine & Company Brick Works	4,000 00
Five-twelfths interest in Lavell Limestone Co.	5,000 00
Shares in Excelsior Building Association	400 00
Hoplins' self-feeder nail patents	12,000 00
Bills receivable on hand	60,446 0

Accounts receivable	$154,857 65
Cash on hand	18,034 38
Four locomotives, 45 coke cars, 15 gondola cars, and 35 dump cars not in inventory	40,000 00
	$565,999 50

THE STATE OF OHIO, *Mahoning County,* } ss:

I, Z. P. Curry, clerk of the court of common pleas of Mahoning county, Ohio, do hereby certify that the pleading filed herein marked "Motion to dismiss application" has become lost from the files in this case and is not now with the said files.

Witness my hand and the seal of said court this 15th day of Oct., A. D. 1889.

Z. P. CURRY, *Clerk,*
[SEAL.] By F. E. PROBST,
Deputy Clerk.

192 *Appeal Bond.*

Know all men by these presents that we, Brown, Bonnell & Company and Henry Crawford, of Chicago, Illinois, and Ralph J. Wick, of Youngstown, Ohio, are held and firmly bound unto Dan. P. Eells *et al.* in the penal sum of two thousand dollars; to the payment of which, well and truly to be made, we do hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators. Signed by us and dated this 19th day of August, A. D. 1889.

The condition of the above obligation is such that whereas the said Brown, Bonnell & Company have taken an appeal from a certain decree rendered against it in favor of said Dan. P. Eells *et al.*, in the court of common pleas within and for the county of Mahoning, in the State of Ohio, at the May term thereof, A. D. 1889, for the *sum* of dissolving said corporation of Brown, Bonnell & Company to the circuit court within and for the county aforesaid:

Now, if the said Brown, Bonnell & Company shall abide and perform the order and judgment of said circuit court and shall pay all moneys, costs, and damages which may be required of or awarded against — by said circuit court, then this obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) BROWN, BONNELL & COMPANY,
By RALPH J. WICK, *Pres't.*
HENRY CRAWFORD, *Surety.*
RALPH J. WICK.

193 I approve the above bond, with the sureties thereto, this 19th day of August, A. D. 1889.

Z. P. CURRY, *Clerk,*
By F. E. PROBST,
Deputy Clerk.

Endorsement: Filed Aug. 19, 1889. Z. P. Curry, clerk.

THE STATE OF OHIO, } ss:
Mahoning County, }

In the Matter of the Application of DAN. P. EELLS and Others for the Dissolution of Brown, Bonnell & Company, an Incorporated Company Organized under the Laws of Ohio. 13065.

I, Z. P. Curry, clerk of the court of common pleas in and for Mahoning county, Ohio, do hereby certify that the above and foregoing transcript contains true and correct copies of all the appearance docket and journal entries, the original petition, copy of order issued Jan. 14th, 1884, and the return of the sheriff thereon, filed January 17th, 1884; the amendment to the petition, the reply of petitioners to the answer of officers, the precipe for copy of order to file statements and the order issued thereon and the sheriff's return on said order, filed February 11th, 1884; proof of publication of notice of hearing, the report of the referee, and the appeal bond.

Witness my hand and the seal of said court, at Youngstown, this 15th day of Oct., A. D. 1889.

[SEAL.]

Z. P. CURRY, *Clerk,*
By F. E. PROBST,
Deputy Clerk.

194 And afterwards, to wit, on August 28th, 1890, a motion was filed in this cause, which is in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Circuit Court of the U. S., Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON CO. *et al.* } Motion to Strike Exceptions to Sale from the Files.
vs.
BROWN, BONNELL & *Bonnell &* COMPANY. }

The plaintiff now comes and moves the court to strike from the files of this case the "objections or exceptions" to the sale made herein filed by Charles S. Worden and the Leadville Coal Company for the reasons following, viz:

Said Charles S. Worden is not a party to this cause and has no interest therein.

Said The Leadville Coal Company is not a creditor of Brown, Bonnell & Company and has no interest in this cause.

Said plaintiff also moves to strike from the files of this cause the "objections or exceptions" to said sale filed by George M. Ayer and Amy G. Ayer for the reasons that the persons named are not proper parties to this cause and have no interest herein.

C. C. BALDWIN,
C. D. HINE,
Solicitors for Complainants.

195 And afterwards, to wit, on Aug. 28th, 1890, an affidavit was filed in this cause, which is in the words and figures following, to wit:

THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Circuit Court of the U. S., Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON CO. *et al.* } Affidavit of Henry Tod.
vs.
BROWN, BONNELL & COMPANY. }

Henry Tod, of full age, being duly sworn according to law, says that he is and has been for many years last past a resident of the city of Youngstown, Ohio, and has large personal acquaintance therein.

Affiant further says that Hugh B. Wick was the uncle of Caleb B. Wick, one of the appraisers of the property ordered to be sold in this cause, but that said Hugh B. Wick has been dead eight to ten years; that Paul Wick was also an uncle of said Caleb B. Wick, but that he also died on or about June 13th, 1890, and that John C. Wick is a cousin of said Caleb B. Wick. Affiant also says that the firm of Wick Brothers and Company, of Youngstown, O., is a partnership composed of the heirs of Hugh B. Wick, dec'd, and of the heirs of Paul Wick, dec'd; that the nearest relationship of any of such partners to said Caleb B. Wick is that of cousin.

196 Affiant also says that he is acquainted with James Neilson, one of the appraisers of the property heretofore ordered sold herein, and that it is not true that said Neilson was at the time said *said* appraisement was made an employé of Andrews Brothers, a partnership of which Chauncy H. Andrews is a partner.

HENRY TOD.

Sworn to before me and subscribed by said Henry Tod in my presence this 27th day of August, 1890.

M. W. SANDERS,
U. S. Com'r, N. D. O.

197 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Circuit Court of the U. S., Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON CO. *et al.* } Affidavit of John H. Clarke.
vs.
BROWN, BONNELL & COMPANY. }

John H. Clarke, being by the undersigned authority duly sworn according to law, says that he has resided in the city of Youngstown, Ohio, for ten years last past, and that he has large acquaintance therein.

Affiant further says that *it* Hugh B. Wick named in the affidavit of Henry Crawford, filed herein on August 27th, 1890, was an uncle of Caleb B. Wick, one of the appraisers of property heretofore ordered sold in this cause, but that said Hugh B. Wick died in the year 1880; that it is true that Paul Wick was an uncle of said Caleb B. Wick, but that said Paul Wick died on or about June 13th, 1890: that John C. Wick is a son of Hugh B. Wick and cousin of said Caleb B. Wick, and that the firm of Wick Brothers & Company, a partnership after the death of Hugh B. Wick, was composed of
198 Paul Wick and the heirs of said Hugh B. Wick, dec'd, and since the death of said Paul Wick has been and is composed of the heirs of Paul and Hugh B. Wick, de'd, and that the nearest relationship of any of said members of said partnership to said Caleb B. Wick is that of cousin.

Affiant also says that he is acquainted with James Neilson, one of the appraisers of the property heretofore sold herein, and that it is not true that said Neilson was at the time the appraisal of said property was made an employé of a partnership known as Andrews Brothers, of which Chauncy H. Andrews was a partner.

JOHN H. CLARKE.

Sworn to before me and subscribed by said John H. Clarke in my presence this 28th day of August, 1890.

M. W. SANDERS,
U. S. Com'r, N. D. O.

199 And afterwards, to wit, on July 23rd, 1890, a motion was filed in this cause, which is in the words and figures following, to wit:

United States Circuit Court, Northern District of Ohio, Eastern Division.

LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & COMPANY.
} In Equity. No. 4195.

Now come the complainants, by their attorney, Francis J. Wing, and move the court to confirm in all things the report of the sale of the property of Brown, Bonnell & Company mentioned and described in the decree for sale entered herein and the order of sale issued herein to Wilbur F. Goodspeed, heretofore appointed herein as special master commissioner to sell said described property, which said report was filed in the office of the clerk of this court on the 23rd day of July, A. D. 1890.

And it is further moved that upon the confirmation of such report of said special master commissioner he be ordered to execute a deed or deeds of conveyance of said property to the purchasers at said sale in accordance with the conditions and requirements of said decree for sale.

FRANCIS J. WING,
Attorney for Complainants.

200 And afterwards, to wit, on Sept. 5, '90, an opinion of court was filed herein, and which is in words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE LAKE SUPERIOR IRON COMPANY *et al.*, Complainants,
vs.
BROWN, BONNELL AND COMPANY *et al.*, Respondents.

RICKS, *J.:*

At the October term, 1889, of the Supreme Court of the United States a decree was entered affirming the decree of this court rendered in this case at the February term, 1886, and on the 26th day of May, 1890, a mandate of said court was received directing this court to enforce its decree. In pursuance to said direction an order of sale was issued out of the clerk's office on the 3rd day of June, 1890, directing the special master commissioner therein named to appraise, advertise, and sell the property described in the decree and order of sale as upon a judgment at law. On the 23rd day of July, 1890, the master commissioner returned the order of sale, reporting that on the 22nd day of July he had sold the said property to William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, as trustees, for the sum of seven hundred thousand dollars ($700,000.00), said sum being more than two-thirds of the appraised value thereof. On the 22nd day of August exceptions to the report of said master were filed by the Leadville Coal Company and Charles S. Worden on behalf of themselves and such other creditors as might choose to join therein. A motion was also filed on behalf of the pur-
201 chasers to confirm said sale. The case is now before the court upon these exceptions and upon the motion to confirm.

The exceptions and the objections are stated in inverse order to their importance. It will be well to consider the last exception first, because if well taken there will be no need to spend time considering the others. The ninth and last exception is:

"That this action abated on the dissolution of such corporation by judicial decree, and said Taylor, the receiver, who now under the statute is vested with the title to all the corporate assets, has not been made a party to this suit in any way."

Postponing for the time a consideration of the question whether in an equity suit of this character after a final decree adjusting all the rights of the parties a dissolution of a defendant corporation, independent of any statutory provision, would make a revivor necessary, we pass to the consideration of the Ohio statutes prescribing the procedure necessary to dissolve a corporation created by authority of the State. After a careful examination of the several sections of the statute on this subject it seems clear that this legislation fully saves and excepts from the general effects of dissolution all rights of parties in suits "pending in any court in favor of or against any corporation," and specifically provides that no such

action "shall be discontinued or abate by the dissolution of the corporation, whether the dissolution occur by the expiration of its charter or otherwise; but all such actions may be prose-
202 cuted to final judgment by the creditors, assignees, receivers, or trustees having the legal charge of the assets of the corporation in its corporate name." The statute provides still further that final relief by execution shall not be delayed by such dissolution, but that "execution may be had and satisfaction or performance of the same enforced by the creditors, assignees, receivers, or trustees having the legal charge of the assets of the dissolved corporation in the corporate name of the dissolved corporation." Now, if we apply these provisions to the case before us, they relieve the court of all difficulty in speeding the suit to a final decree of confirmation and settlement. The jurisdiction of the court from the time the supplemental bill was filed has proceeded upon the well-settled principle in equity, that the property and assets of this insolvent defendant corporation was a trust fund to be distributed for the benefit of its creditors as their rights and equities should be finally determined. In order to adjudicate those rights the creditors were allowed and required to become parties to this suit. Their claims have been filed, the amounts due them have been determined, and their priorities fixed by final decree. Every person interested in the assets of this insolvent corporation is before the court, and his rights have been fully determined. The court has complete jurisdiction, both of the funds and of the parties, is ready to make distribution of the trust fund, but is now, after seven years of litigation, asked to relinquish jurisdiction, turn the property and funds that have accumulated by judicious management over to another court, and require creditors to renew litigation in another
203 form. Such an extraordinary abandonment of creditors to such a harsh fate would be justified only by a clear and undoubted want of jurisdiction.

The Ohio statutes and the general principles controlling equity procedure furnish abundant reasons for retaining jurisdiction and giving parties final and complete relief in these proceedings. The provisions of the statute quoted make it plain that after final decree of dissolution in the State court these proceedings could still have been prosecuted against the defunct corporation in its corporate name and without revivor, as was done in this case. By the express provision of the statute before quoted "execution may be had and satisfaction or performance of the same enforced in the corporate name of the dissolved corporation." If such unembarrassed relief was provided for enforcing a judgment at law how much more liberal a construction might be claimed for such a provision when applied to a suit in equity where the well-established principle controls that the equitable rights of the creditors of a corporation survive its dissolution, although their remedy at law is extinguished. A court of chancery will furnish a remedy to protect and enforce their equitable rights against any assets belonging to the company at the time of its dissolution.

At the time the proceeding to procure a decree of dissolution was

instituted in the Ohio tribunal this court had control of all the property of the defendant and was operating its mills by a receiver. It had adjudged the defendant insolvent and had reached out its long arms to bring all parties, resident and non-resident, before it
204 to adjudge their rights to the property and fund it had seized. It had impressed upon the fund and property the character of a trust and had undertaken to convert them so as to make an equitable distribution thereof amongst the beneficiaries entitled to share therein. This afforded a sufficient basis for the equitable jurisdiction claimed. It was in most respects in the nature of a proceeding *in rem*, and its jurisdiction of the property and assets was incontestable.

The mandate of the Supreme Court specifically directed this court to enforce the decree which it had affirmed. This affirmance was made after the decree of dissolution in the State court. Under that mandate this court had no discretion as to how or when or upon what terms the defendant's property should be sold. We are directed to enforce the decree as affirmed, and in that decree the provisions for its execution are definitely prescribed. We do not assume to modify or annul any of its provisions, but have undertaken to execute it as literally as possible. The provisions of the Ohio statutes have been carefully considered, not because we hold that our jurisdiction to proceed without revivor can be aided by this statute, for it is well settled that the equity jurisdiction of this court can neither be restricted nor enlarged by State legislation; but inasmuch as all the authority and rights claimed by the receiver appointed in the State court are conferred by the Ohio statutes, I have carefully considered them in order to ascertain whether even under all the power thereby conferred upon said receiver a revivor as to him was necessary. The saving exceptions made by said statutes, as hereinbefore quoted, make it plain that even under their provisions it was not. The court which decreed dissolution and appointed him
205 did not contemplate that he should assume the right to claim the title to the property or fund. In its decree it expressly directed that he should "not interfere with the possession of the receiver appointed by the Federal court of the effects and assets of said corporation."

It is, therefore, clear that even if we concede to the State statutes all that is claimed the decree of dissolution of the State court neither ousted this court of its jurisdiction nor made revivor proceedings necessary.

Neither under the general equity jurisdiction of this court could such decree of dissolution affect its jurisdiction or make revivor necessary. As before stated, the court had possession and control of this defendant's property and assets as a trust fund to be converted and distributed to the beneficiaries under said trust. Its jurisdiction thereof had been finally fixed by the Supreme Court, and the manner in which that trust fund should be converted for distribution had been prescribed, and this court was directed to carry out the decree. We are now asked to disregard this mandate, assume the right to annul its provisions by relinquishing jurisdiction, and

transfer the fund and property to a new tribunal for further litigation. There is no equity in such a claim. The ninth exception is, therefore, overruled.

The eighth exception involves substantially the same ques-
206 tion. The contract therein referred to was not of a nature to affect the rights of the parties thereto, and the decree of dissolution, for the reasons above given, did not supersede or make invalid any decree or any order in the proceedings in this case. Said exception is, therefore, overruled.

The remaining exceptions are based upon objections to the sale, because one of the appraisers, Caleb B. Wick, was related to some of the creditors, and because another appraiser, James Neilson, was at the time in the employ of C. H. Andrews, one of the creditors and a party to this suit, and that because of such relationship these appraisers were not "disinterested freeholders," as prescribed by the Ohio statutes, and because of such want of proper qualification this sale should be set aside.

There is nothing in the affidavit in support of these exceptions, or in anything appearing on the record in this case to show that these appraisers were not in every other respect well qualified and fitted
207 for their duty. The court is entirely satisfied that the property was appraised at a fair valuation, and that therefore the appraisers discharged their duty intelligently and impartially. It appears from affidavits in the case that Caleb B. Wick, one of the appraisers, was a nephew of Hugh B. Wick, who died in 1880, and a nephew of Paul Wick, who died in June, 1890. The heirs of said two uncles, together with John C. Wick, a cousin of said appraiser, comprise the firm of Wick Bros. & Co., who are creditors in this case. Caleb B. Wick, the appraiser, is not shown to have any interest in this firm or their claim. The only ground upon which it is claimed that he is not a disinterested freeholder is that he is related in the degree above stated. It further appears from affidavits that John C. Neilson, the other appraiser, was not at the time he acted in that capacity in the employ of C. H. Andrews, a creditor in this case. The question is therefore presented to the court whether the fact that Caleb B. Wick was a distant relative of some of the creditors disqualified him to act as an appraiser. Various cases have been cited in which, under the statutes of other States, an appraiser related to some of the parties in the case has been held to be disqualified; but in all these cases the relationship existed as to parties who were more directly and more extensively interested in the result of the sale. In this case the interest of the creditors with whom these appraisers are connected by relationship or business is so small a portion of the aggregate claims of over one million of dollars that it would be straining the application of the stat-
208 ute to hold that for such reason these appraisers were disqualified to act. The court, being entirely satisfied that the appraisal was just and fair and that the property sold for a full and satisfactory consideration, claims the right and privilege to look to the result reached, and if that is satisfactory, and the court is persuaded that upon the whole proceedings the sale should be con-

firmed, it will not subject the parties interested to the delay or expense of a resale because of any such technical objection.

Another exception urged goes to the irregularity of the sale, because the decree expressly required that the property should be appraised and sold in connection with pending and unfinished contracts of the receiver, and that such contracts were of great value, in addition to the tangible property itself, and that the master commissioner and appraiser improperly ignored that provision of the decree and did not include in their appraisals the value of such contracts.

By an examination of the decree it will be found that the court ordered the master commissioner "to cause the real and personal property herein described, except materials and supplies and products manufactured or in process of manufacture, to be appraised, advertised, and sold," etc.; and by another provision of the decree it was ordered "that the receiver herein be, and he is hereby, empowered to sell at private sale all the materials and supplies and product manufactured or in process of manufacture in his hands for such reasonable price and at such time as in his discretion he should deem best." This was a plain direction to the master to appraise
209 only the property described in the decree. This property consisted of real estate and personal property therein described, but did not include pending contracts between the receiver and purchasers of material or parties to contracts for the delivery of ore or other products used by the receiver in the mills. It is further clear that by the provisions of said decree this court has full control to direct the receiver in such sales as he may hereafter make of manufactured products in his hands to sell such interest as he may have in pending contracts which will be of value and add to the sum to be distributed to the creditors in this case.

Another objection to said sale is stated to be that the receiver, before said sale, under the instructions of the court, gave notice that any purchaser of the property then offered for sale would have the right to buy from the receiver certain real estate purchased from and conveyed to him by Arms, Bell & Co. on notice to the receiver of an election to buy, and after the accepted bid of said purchasers they did notify the receiver of their election to buy such real estate. This refers to real estate that had been purchased by the receiver, under orders of the court, from time to time during his receivership. This real estate comprised small parcels that were offered to the receiver from time to time by parties who owned them because they were more valuable to the plant operated by the receiver than they were to the owners. It seemed to the court at the time the orders were made to be of advantage to the receiver and the cred-
210 itors that such property should be purchased, and in every case it was done with the consent of the creditors and at their request. The title to such property was vested in the receiver for the benefit of creditors. It was not included in the property described in the decree which the master commissioner was ordered to sell, and was not, therefore, appraised as a part thereof. It appeared to the court fair and just to whoever might become the purchasers of

the property, as well as to the interest of the creditors, that the purchaser should have the privilege of buying this property from the receiver at the price paid therefor. The receiver was therefore authorized to make such announcement at the sale. It did not in any way relate to the property described in the decree and ordered therein to be sold, could not affect the regularity of the sale, and is a matter fairly within the discretion of the court.

It is further objected that the property sold for a grossly inadequate price, as shown by the report of the receiver. Under this objection it is claimed that when the receiver took possession of this property he made an inventory thereof and returned the same into the court. From this report it appears that the property was valued at a sum considerably greater than that fixed by the appraisers under the order of sale now under consideration. But it must be remembered that this plant has been operated by the receiver for nearly eight years. During that time he has been authorized to keep the property in repair, but he has not been permitted to expend any considerable sum in the purchase of new machinery.
211 It is a matter within the knowledge of all that during the past eight years there have been many changes and improvements in machinery in such mills. While the property has been preserved in good repair, the mill is not now equipped with the most approved and valuable machinery. There has been likewise a general depreciation of such property throughout the country. The appraisers undoubtedly considered all these circumstances. The court is satisfied, from the qualifications of these appraisers, their knowledge of mill machinery, and their familiarity with the value of such property, that the same was appraised, as before stated, at a fair price and sold for a reasonable sum. The price can certainly not be claimed as inadequate. No affidavits have been filed by persons qualified to judge claiming that the same was sold for an inadequate price. No offer is now made to advance the bid and no misconduct is alleged on the part of the purchasers.

The exception is based entirely upon the difference between the appraised value and the value as inventoried by the receiver, as above stated; and for the reasons stated this is not sufficient to show inadequacy of price.

The tenth exception is that the five coal leases in the name of Ralph J. Wick, trustee, cannot now be legally sold and conveyed, because said Wick is not a party thereto and said property is out of the territorial jurisdiction. It is now too late to entertain the objection that Wick, as trustee, is not a party to this case, even if it be true.

The leaseholds are personal property and are described in the decree as the property of the defendant and were properly ap-
212 praised, advertised, and sold as part of the personalty and within the jurisdiction of the court. If there should be any contention hereafter between Wick, trustee, and the purchasers as to the title to these leaseholds acquired by this sale because of the alleged failure to make him a party thereto such contention can be settled elsewhere. It is no reason for setting aside this sale.

In thus finally disposing of this protracted litigation it seems proper and due to my predecessor and his associates, the circuit judges, who have aided him in the management of this vast property, to direct attention to the satisfactory results that have followed its seizure and operation. The property has not only been preserved intact for the protection of creditors, but by the wise management of the receiver and his principal agents and officers, under the general direction of the court, a fund of over seven hundred thousand dollars has been accumulated, so that after long and expensive proceedings it seems assured that every creditor will be paid the principal sum due him in full. But for the appointment of a receiver the property would have been dissipated and largely wasted in hostile litigation, to the prejudice of all concerned. It is not often that such beneficial results follow such long litigation and it is proper subject of congratulation to all concerned.

(Signed) AUGUSTUS J. RICKS,
District Judge.

Judge Jackson concurs in this opinion.

213 And afterwards, to wit, on Sept. 22, '90, the petition of Leadville Coal Co. *et al.* was filed, and which is in words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON CO. and Others
vs.
BROWN, BONNELL & COMPANY.

To the honorable judges of said court, in chancery sitting:

Your petitioners, The Leadville Coal Company and Charles S. Worden, respectfully show to the court—

1. That they are now and have been ever since the institution of this action the creditors of said Brown, Bonnell & Company, holding separate demands and debts directly and primarily against the said corporation, consisting of divers promissory notes issued for value by such corporation; and that heretofore, to wit, on November 22, 1883, the said Leadville Coal Company recovered judgment on its demands against said corporation in the court of common pleas of Mahoning county, Ohio, for the sum of $11,974.45, which judgment is in full force, unreversed, and unsatisfied, and on the same day and in the same court the said Worden recovered judgment against said corporation upon the notes by him held for the sum of $17,383.77, which judgment also remains in full force and unreversed and wholly unsatisfied. A certified copy of such recovery is herewith filed.

By reason whereof the demands of your petitioners have been adjudicated by a court of competent jurisdiction, and they are entitled to share in any judicial distribution of the assets of such cor-
214 poration equally with all other lawful creditors of said corporation.

2. This court has found and decreed that the said corporation, Brown, Bonnell & Company, was when this action was instituted and ever since has been insolvent. Your petitioners are informed and therefore charge that the entire assets of said corporation, which are now in the hands of this court, will not be sufficient to pay off and discharge in full all the claims of intervenors who have presented their demands herein, but if all such claims as heretofore reported are allowed to share in such distribution there will be a deficit of assets amounting to several hundred thousand dollars with no available fund to pay any part thereof except the secondary liability of a few of the stockholders of such corporation.

3. Your petitioners show that no dividend decree has ever been entered herein and the rights of those claiming as creditors have never been finally adjudged or decreed and the whole fund still remains undistributed and in the registry of the court, subject to such final decree of distribution as it may hereafter enter.

4. Your petitioners further show that in the master's report on claims and in the preliminary order of sale there were included the following persons and corporations as creditors of said Brown, Bonnell & Company entitled to share in the corporate assets in the sums set opposite their names respectively, viz:

	Greenville National Bank	$10,384 09
215	Girard Savings Bank	5,810 09
	First National Bank, Garrettsville	6,202 24
	First National Bank, Youngstown, O.	52,908 56
	R. S. Walker	10,619 06
	W. R. Errett	18,242 10
	George D. Wick	15,232 86
	First National Bank, Mercer, Pa.	11,366 37
	Com. National Bank, Cleveland, O.	63,720 88
	Lorenzo Lane	5,927 15
	Henry Wick & Company	11,790 78
	Wick Bros. & Company	29,208 51
	Pratt & Company, Buffalo	574 61
	Pennsylvania Company	20,772 97
	National Bank of West Va.	5,828 47
	Nat. Bank of Fayette County	77,424 95
	Citizens' Nat. Bank, Pittsburgh	69,903 43
	Genaga Sav. & Loan Association	12,252 28
	Farmers' Deposit & Sav. Association	5,962 71
	Am. Exchange Nat. Bank	11,419 03
	Pittsburgh Nat. Bank of Commerce	11,689 42
	First National Bank, Warren, O.	18,015 64
	Monongahela Nat. Bank	35,205 49

Your petitioners charge that none of such above-named parties were in law or fact, at the institution of this suit or at any time since, *bona fide* creditors of Brown, Bonnell & Company, but were only creditors of a firm known as John V. Ayer Sons;
216 that each and all of such intervenors claim to be creditors of Brown, Bonnell & Company and entitled to a distributive

share of its assets solely because they respectively hold promissory notes executed by the said firm of John V. Ayer Sons, which said notes had been endorsed on the backs thereof to the said several parties by the said corporation, Brown, Bonnell & Company, and their respective claims of debt are based exclusively upon the liability arising from such endorsements.

At the date of the institution of this action none of such paper had matured, and the only liability of any kind which said Brown, Bonnell & Company sustained to any such indebtedness of John V. Ayer Sons was secondary and contingent, and petitioners charge and offer to prove that none of the said claims are an indebtedness of or recoverable against said Brown, Bonnell & Company, because the holders of such notes of said John V. Ayer Sons did not according to law cause the said notes to be presented for payment at their respective maturities or have the same protested or give legal notice to said Brown, Bonnell & Company of such presentment and non-payment, nor did the said creditors use diligence against the makers of such paper such as is required by the law of Illinois regulating such paper; by reason whereof the said Brown, Bonnell & Company became and has ever since been wholly discharged from any and all liability on any of such notes of John V. Ayer Sons, and none of the said demands have any right to share with your petition-
217 ers or other actual and primary corporate creditors in the distribution of assets of said Brown, Bonnell & Company and thereby diminish the dividends which would otherwise be enjoyed by all such creditors.

Your petitioners show that nearly all of such claims were filed after the order *pro confesso* against the corporation had been entered herein; that the hearing before the master was *ex parte* and without any notice to any creditors of the time or place of hearing; that neither the receiver or corporation made any defence to such claims; that no evidence whatever was introduced to sustain such claims or any of them or show any such presentment, demand, or protest; that as no entries appear upon the corporate books showing any demand, protest, or notice of non-payment of such notes of John V. Ayer Sons the allowance by the master of each and every of such claims was in fact made without any evidence whatever.

5. As the said corporation has been dissolved by a decree of the Mahoning common pleas court, a copy of which is hereto annexed, your petitioners hereby challenge the right of any such above-named parties to share as creditors in the fund now in court, and hereby offer to prove that they are not creditors of such corporation or entitled to any dividend from its assets.

6. Your petitioners claim that their respective judgments are liens on the real estate which belonged to Brown, Bonnell & Company in Mahoning county, Ohio, when such judgments were rendered, and which real estate is fully described in and has been sold under the decree of this court, which decree did not foreclose any mort-
218 gage or enforce any specific lien, but was obtained solely to reduce the corporate assets to money.

They therefore pray that the claims of each and every of the

above-named parties be rejected from the final decree, or that if admitted that the judgment liens of your petitioners shall be paid in full, according to the statutes of Ohio, before any dividend shall be paid to any creditors at large, or if the court shall decide against allowing the challenge of such claims or against such liens or preference, then that the court will order payment of petitioners' claims *pro rata* with other creditors, and for all other proper relief.

HENRY CRAWFORD, *Solicitor.*

Endorsement: Petition of Leadville Coal Company and Charles S. Worden. Filed Sept. 22, 1890.

219 And afterwards, to wit, on August 28, 1890, a transcript was filed in this cause, and which is in the words and figures following, to wit:

Appearance Docket No. 10, Court of Common Pleas, Mahoning County, Ohio, page 13071.

CHARLES S. WORDEN *vs.* THE LEADVILLE COAL COMPANY, THE PAINESville and Youngstown Railway Company, and Ralph K. Paige, Receiver; Brown, Bonnell & Co., and The Second National Bank of Youngstown, Ohio.	Civil Action. January Term, 1884.

A. W. Jones.

January 18, 1884.—Petition and precipe filed; also waiver of service of the Leadville Coal Company, by W. S. Anderson, its attorney, and of Brown, Bonnell and Company and the Second National Bank of Youngstown, Ohio, by A. W. Jones, their attorney.

Endorsed on petition: Summons issued to sheriff of Lake county for the Painesville and Youngstown Railway Company and Ralph K. Paige, receiver.

1884.

Jan. 18. Ralph J. Wick appointed receiver; bond $2,500. J. 26, p. 42.

" 19. Bond of Ralph J. Wick, receiver, filed.

" 19. Receiver ordered to take possession and appraise property.

220 Lloyd Booth, John Monis, Jr., and C. F. Walker appointed appraisers. J. 26, p. 44.

Jan. 21. Summons to Lake county returned and filed, endorsed:

Received this writ January 29th, 1884, at 9 o'clock a. m., and pursuant to its command, on the same day and date, I served this writ upon the within-named defendant, The Painesville and Youngstown Railway Company, by delivering to J. A. Newcome, superintendent of said railway company, a true and certified copy thereof, and on the same day and date I served this

writ on the within-named defendant, Ralph K. Paige, receiver of said railway company, — a like true and certified copy thereof.

Fees $1.54. A. D. BARTLETT, *Sheriff.*

Fees paid by A. W. Jones for service of this summons.

Feb'y 7. Statement of book assets filed.
" 9. Inventory and appraisement of personal property filed.
" 15. Order- that receiver sell hoisting machinery for $3,000 to pay balance of mortgage to 2nd National Bank and to pay certain royalty and wages, see J. 26, p. 118, and continued.
M'ch 1. Decree. See J. 26, p. 184.

May Term.

May 26. Order- that receiver release two certain leases, see J. 26, p. 332, and con.

Sept. Term.

Sept. 23. First report of receiver filed, with vouchers Nos. 1 to 97, 221 inclusive.
Nov. 12. Order- that receiver release lease to Winchester Moherman by December 1, J. 27, p. 174, and con.

January Term, 1885.

Jan. 20. Second report of receiver filed.
Feb. 10. First and second reports confirmed. Ordered that receiver appraise and sell at private sale all property of Leadville Coal Company and pay (1) costs; (2) his salary; (3) balance to plaintiff to the extent of claim. J. 27, p. 470.
Apr. 28. Report of receiver filed.
" 29. " " " "

May Term.

May 14. Report confirmed. Orders for payment of claims, &c. Order to surrender lease to Lanterman *et al.* J. 28, p. 136.
July 6. Receiver ordered to pay $507.54 to plaintiff, J. 28, p. 260, and continued.

Sept. Term.

Continued.

January Term, 1886.

Continued.

May Term.

June 25. Order to reappraise certain machinery. J. 30, p. 136.

222

June 28. Appraisement filed.
July 2. Appraisement confirmed and sale ordered; $200 allowed to receiver, J. 30, p. 154, and con.

September Term.

Dec. 2. Receiver's report filed.
" 2. Receiver's report confirmed; $500 allowed to receiver and $1654 to A. W. Jones, attorney; balance in receiver's hands to be paid to plaintiff. J. 30, p. 527.

January Term, 1889.

Feb'y 27. Hearing to court. It appearing to the court that defendant Leadville Coal Company has a judgment against Brown, Bonnell & Company which, with interest to February 7th, 1889, amounts to $15,758.37, and it being shown to court that it would be for best interest of all parties that said claim be sold and value realized in money, *and* by consent it is ordered that Ralph J. Wick, receiver, sell and assign said judgment upon receiving a sum therefor not less than 60% of the said claim for findings, &c. See entry J. 36, p. 168.

M'ch 19. Former entry set aside; hearing to court for findings; see entry. It appearing to the court that on Nov. 22, 1883, the defendant recovered judgment against Brown, Bonnell and Company for $11,974.45 and costs, $13.94, in all $11,988.39, and it being shown to court that it will be for the best interest of all parties that said claim be sold, by consent it is ordered that Ralph J. Wick, receiver, sell and assign said judgment upon receiving a sum therefor not less than 60% of said claim. J. 36, p. 245.

223

May Term, 1889.

July 15. Report of receiver filed.
" 15. Report of receiver approved and confirmed and receiver discharged, and this case ordered to execution docket. J. 37, p. 243.

224

Journal Entries.

J. 26, p. 42.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 537. Civil Action.

The plaintiff appearing with A. W. Jones, his attorney, and the

defendant The Leadville Coal Company, having been duly notified, appeared with W. S. Anderson, its attorney, thereupon this cause came on to be heard upon the motion of the plaintiff to appoint a receiver, as prayed for in the petition herein, and was submitted to the court, who, upon consideration, do appoint Ralph J. Wick as receiver, as prayed for in said petition, upon his being sworn and giving bond in the sum of twenty-five hundred dollars, with surety to the satisfaction of the clerk of this court. He is directed to take possession of said property in the petition described, and carry on said business of mining and selling said coal in a reasonable and proper manner, and to hold said property and the proceeds of said business subject to the further order of this court.

225 J. 26, p. 44.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 537. Civil Action.

The receiver, Ralph J. Wick, having presented his bond, with E. C. Wick as surety, which is approved by the clerk of this court, and said receiver having been duly sworn according to law, it is ordered that he immediately take possession of all the property mentioned in the petition, and that he proceed by the oaths of Lloyd Booth, John Morris, Jr., and C. F. Walker and make an inventory and appraisement of all the property and assets of said Leadville Coal Company and file the same with the clerk of this court; and it is further ordered that he proceed and carry on said mines in accordance with the former order of this court.

J. 26, p. 118.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY. } 13071, 537. Civil Action.

On motion to the court it is ordered that the receiver sell to Henry Crawford the hoisting machinery owned by said Leadville Company and unused, being the same that is stored in the works of Brown, Bonnell & Co., and was appraised at $2,500. Said receiver is
226 authorized to sell said machinery for the sum of three thousand dollars and to give time for the payment for the same for a period not exceeding six months. Said receiver is further ordered to paid the claims in favor of the Second National Bank of Youngstown, Ohio, amounting to the sum of $962.47, with interest from February 1st, 1884, out of any funds in his hands upon said bank releasing its mortgage upon the property of Leadville Coal Company. Said receiver is further ordered to pay to the parties entitled thereto any proper claims for rent or royalty for coal mined during the year 1883 and up to the time of his appointment, and also advance rents or royalty, and as to rent or royalty for coal mined since his appointment or in future he is also directed to

make such payments without further order, including advanced rents or royalty. Said receiver is also ordered and directed to pay all proper claims for labor performed for said company within three months before his appointment and up to this time, and in future to pay the same in regular periods as shall best suit the convenience of said receiver, but as often as once in each month, and oftener if thought best by said receiver.

J. 26, p. 184. M'ch 1, '84.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 537. Civil Action.

The plaintiff comes, by his counsel, and the defendants are
227 each and all in default of answer or other pleadings, and, neither party requiring a jury, the same is submitted to and tried by the court upon the pleadings, proofs and exhibits, who on consideration find all the allegations of the petition to be true, and that the equity of the case is with the plaintiff, and that he is entitled to the relief prayed for in the petition. The court further find that since the commencement of this action that the receiver herein under the order of this court has paid and satisfied the claim and lien of the Second National Bank of Youngstown, and that it has no further interest, claim, or lien in this action or against said Leadville Coal Company. The court further find that the said Painesville and Youngstown Railway Company and Ralph K. Paige, as receiver of said railway company, *is* indebted to said Leadville Coal Company in the sum of about six thousand dollars. The exact amount, however, the court is unable to find under the proof; that said claim against said railway company arises for land sold to said railway company for right of way, and is a lien on the railroad of said railroad company or a part of it, and that the same will be determined in an action pending in the court of common pleas of Lake county, in this State, in an action then pending, wherein August G. Hartroy is plaintiff and The Painesville and Youngstown Railway Company and others are defendants. It is further found that said plaintiff has the first lien on said fund after paying reasonable and proper attorney fees to counsel employed by said Leadville Coal Company for the prosecution of said claim, and said railway company and said receiver are ordered and decreed
228 to pay the same to this plaintiff to the amount of his said claim. The court further find that said defendant, Brown, Bonnell & Co., is indebted to said Leadville Coal Company in a large sum, but the exact amount of which cannot now be determined by this court. Wherefore E. M. Wilson is appointed a special master to hear and determine the amount of said indebtedness and report the same to this court and to hear the same on ten days' notice from either party. The court further order and decree that when said amount is determined that said Brown, Bonnell and Company and its receiver shall pay to the plaintiff any payments it may make on

said claim, said plaintiff having the first and only claim to said indebtedness. The court further find that the plaintiff herein has the first and only lien on all the property described in said petition for the payment of his said claim and judgment, and that he has a lien by virtue of the levy of execution, as alleged in said petition, as well as to the proceeds of the sale of the hoisting machinery made to Henry Crawford under the order of this court. The court further find that said receiver, in the proper discharge of his duty, has become indebted to W. S. Anderson in the sum of twenty-five dollars for professional services as attorney, and said receiver is ordered to pay the same out of any funds in his hands as such receiver. The court further find that there is due to the plaintiff on his judgment the sum of $18,680 *dollars* and costs, taxed at $——, with interest from January 18, '84,
229 which is the first and only lien upon all the property and indebtedness mentioned in said petition. It is therefore ordered, adjudged, and decreed by the court that unless said Leadville Coal Company pay the amount of said judgment and costs and the costs in this action, including a monthly salary to Ralph J. Wick, receiver, of two hundred dollars per month, within five days from the rendition of this decree; that upon the precipe of plaintiff or his attorney that an order issue to said receiver to sell all of said property as upon execution at law, and if he be unable, in his judgment, to collect the claims against the Painesville and Youngstown Railway Company and Ralph Paige, as receiver, and Brown, Bonnell & Company and its receiver, that he be authorized and required to sell said claims at public auction, giving thirty days' notice of the time and place of such sale by publication in one newspaper of general circulation in said county printed in the city of Youngstown; and it is further ordered that said receiver proceed and carry on the business of said Leadville Coal Company, under the orders of this court heretofore made, until said property shall be sold, as is herein ordered, — until the further order of this court. It is further ordered that out of the proceeds arising from said sale or from the carrying on of said business, as heretofore ordered by the court, that said receiver pay, first, the costs and expenses of said receiver in carrying on said business and his duties as receiver herein, including his salary as aforesaid and payment of necessary attorney fees;
230 second, that he pay the costs of this suit and the costs in case of this plaintiff against said Leadville Coal Company, in which judgment was obtained at this time; third, that he pay the claim and judgment aforesaid, and any balance after said payments that he hold subject to the further order of this court; and for the purpose of receiving a report from E. M. Wilson, special master herein, and the report of the receiver herein, this cause is continued.

J. 26, p. 332.

CHARLES S. WORDEN
vs.
LEADVILLE COAL COMPANY *et al.* } 13071, 378. Civil Action.

On motion to the court, the receiver is ordered to cancel and release two certain leases held by said Leadville Coal Company, to wit: One lease made by Wesley L. Loyle to the Leadville Coal Company, dated June 1, 1882, and one lease made by Sarah A. Packard to H. C. Ayer, dated April 20, 1880, and by said Ayer assigned to said Leadville Coal Company.

J. 27, p. 174.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY. } 13071, 284. Civil Action.

It appearing to the court that all the minable coal has been exhausted in the land covered by a lease made by Winchester
231 Moherman to Caleb B. Wick and assigned by him to Hulbert C. Ayer and by him assigned to the defendant, said lease being dated March 9th, 1880, and recorded in the record of Mahoning county, Ohio, Book of Leases, vol. 3, page 166—

It is therefore ordered by the court that on or before the 1st day of December, 1884, the receiver herein release and surrender to said Moherman said lease, and to release the land covered by said lease from the same.

J. 27, p. 470.

CHARLES S. WORDEN
vs.
LEADVILLE COAL COMPANY. } 13071, 193. Civil Action.

Ralph J. Wick, the receiver heretofore appointed, having, on the 23rd day of September, 1884, and again on January 17, 1885, filed herein his report of his transactions as such receiver, and also an itemized account of his receipts and expenses up to and including said 17th day of January, 1885, which reports being submitted to the court for the examination, it is found by the court that all the transactions of said receiver up to and including said 17th day of January, 1885, have been correct and in pursuance of and in conformity with law and the former orders of this court; and the court further find that said report of receipts and expenditures are in like manner correct and do approve the same, and that the balance shown in the hands of said receiver is in all respects correct.

232 And it being shown to the court that it is for the best interest of all the parties herein that the property still remaining in the hands of the receiver be sold and the same applied to the judgment of the plaintiff, and upon application of the plaintiff and

upon due notice to the defendant and upon good cause shown, it is ordered by the court that all the balance of the property belonging to said defendant and in the possession or under the control of said receiver shall be appraised by three disinterested persons to be selected by said receiver, and after such appraisement said receiver is ordered and directed to sell said property at private sale for cash, at a sum not less than two-thirds of its appraised value, and said receiver is directed to make said sale within sixty days from the first day of March, 1885; and from the proceeds of said sale he is ordered to pay, first, the costs of this suit; second, the salary of said receiver, and the balance, if any, he shall pay to plaintiff or his attorneys to apply upon the judgment alleged in this case until the same is paid in full.

J. 28, p. 260. July 6, '85.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 141. Civil Action.

It appearing to the court that R. J. Wick, receiver herein, has in his hands the sum of five hundred seven and $\frac{54}{100}$ dollars
233 ($507.54) of the assets of the Leadville Coal Company, and it further appearing that the said money is proceeds in his hands under the order of this court, it is ordered by the court that he pay the said money to the plaintiff or his attorneys to apply upon the judgment set forth in this case.

J. 30, p. 136.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 80. Civil Action.

The receiver now comes and shows to the court that Henry Crawford has failed to pay for the machinery which was ordered sold under the former order of this court; and, having returned the same to the said receiver, it is ordered by the court that said order of sale heretofore made to the said Henry Crawford be cancelled, annulled, and held for naught; and it appearing that said receiver has said property in his possession, and that he is unable to sell it under the former appraisement, for the reason that the property has now depreciated in value, it is ordered that the said property be reappraised, and for that purpose Lloyd Booth, John Walter, and John S. Besore are appointed appraisers; and it is ordered that they on oath appraise said property and return their appraisement forthwith to this court.

234 J. 30, p. 154. July 2, '86.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY. } 13071, 80. Civil Action.

The said appraisers heretofore appointed in this case having returned into court their appraisement appraising the said property at the sum of two thousand dollars ($2,000); and it appearing to the court that that is a reasonable and fair value of the property; and it further appearing that the Webster, Camp, and Lane Machine Company are willing to purchase said property at private sale at said sum, loaded on the cars here at Youngstown; and it appearing to the court that said sale would be for the best interests of all parties concerned, it is ordered and the receiver is hereby directed to sell the same at private sale to the said Webster, Camp and Lane Machine Company for the said sum of two thousand dollars ($2,000), delivered on the cars at Youngstown, and to accept in payment therefor the acceptance of said machine company due in three months from the receipt of the property by it.

It further appearing to the court that said receiver has had charge of said property for about three years, and has discharged other duties as such receiver, for which he has not been paid, it is ordered by the court that the sum of two hundred dollars ($200) be now allowed to the receiver to apply upon his service, and to be paid out of the said money when collected by him.

235 This allowance, however, is not intended to cover any services rendered as such receiver in the collection of any money due from the Painesville & Youngstown Railway Company, but allowance for that service to remain to be adjusted when the money from said railway company shall be collected.

J. 30, p. 527. Dec. 2, '86.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 13071, 71. Civil Action.

Ralph J. Wick, the receiver heretofore appointed in this case, having, this 2nd day of December, 1886, filed his report herein, the same came on to be heard upon said report; and the same having been examined by the court, it is found to be correct in all respects, and the same is approved and confirmed by the court.

The court further find from said report that there is a balance in the hands of said receiver for distribution in the sum of $7,762.80. The court further find that the receiver is entitled to the sum of $500 as an allowance to him for services, in addition to all the allowances heretofore made; and it is therefore ordered that out of said sum of $7,762.80 said receiver retain for his own services said sum of five hundred dollars ($500), which shall be full payment to this date.

236 The court further find that A. W. Jones has been the attorney and counsel of said receiver in this case, and also in

the case of A. G. Hatry against The Painesville & Youngstown Railway Company, in Lake county common pleas court, State of Ohio, and also in the case of Owen Evans, administrator, against said receiver, lately pending in this court but now disposed of, and that he, as such attorney and counsel, has received no compensation for his services in said cases. The court further find that said Jones, with the knowledge and consent of said receiver, employed Moses and Hine to assist him in said case of Hatry against The Painesville and Youngstown Railway Company, and that said employment was necessary and proper in the case; and the court find that their services in the case were reasonably worth the sum of $154.

The court further find that in addition to the sum of $154.50 said Jones is entitled to be paid by said receiver from said fund now in his hands the sum of fifteen hundred dollars ($1,500), making together the sum of $1,654.

Said receiver is therefore ordered that out of the funds now in his hands he pay to said A. W. Jones said sum of sixteen hundred and fifty-four dollars ($1,654) in payment for his services as attorney and counsel in the three cases herein named, including said claim of Moses and Hine, this being, with the payments heretofore made, full payment to this date for all services rendered to said receiver by said Jones, and this allowance being in addition to payments heretofore made by said receiver to said Jones.

237 The court further find that after paying said allowances for compensation to said receiver and said Jones there will remain in his hands for distribution the sum of $5,608.80, and out of which said receiver is ordered to pay any balance of costs in this case, and the residue pay to plaintiff to apply upon his judgment against said defendant herein; and this cause is continued.

J. 36, p. 168.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY *et al.* } 710, 13071. Civil Action.

It appearing to the court that said defendant, The Leadville Coal Company, has a judgment against Brown, Bonnell and Company, which, with interest, amounts this 27th day of February, 1889, to the sum of $15,758.37; and it being shown to the court that it will be for the best interests of all parties to this action that said claim should be sold and the value of said claim realized in money—

It is, by consent of all parties hereto, ordered by the court — Ralph J. Wick, the receiver heretofore appointed herein, sell, assign, and transfer said judgment and claim against Brown, Bonnell & Company to the purchaser upon receiving in payment therefor a sum not less than sixty per cent. of the amount of said claim as found by this order.

It is further ordered, by like consent, that the assignment
238 and transfer of said receiver upon receiving the purchase-money aforesaid shall operate to transfer and convey to the

purchasers full and perfect title and ownership to all of said claim, but without recourse to any party herein.

J. 36, p. 245. M'ch 19, '89.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY. } 710, 13071. Civil Action.

The order heretofore made at this term authorizing Ralph J. Wick, the receiver, to sell and transfer the judgment of the Leadville Coal Company against Brown, Bonnell & Company is hereby stricken out, annulled, and held for naught.

It appearing to the court that heretofore, to wit, on the 22nd day of November, 1883, the said The Leadville Coal Company recovered a judgment against Brown, Bonnell & Company by the consideration of this court for the sum of $11,974.45 and costs, taxed at $13.94, amounting to the sum of $11,988.39, which judgment is still in full force and unsatisfied; and it being further shown to the court that it will be for the best interest of all the parties to this action that said judgment and claim should be sold and the value of the same realized in money, it is, by consent of all parties hereto, ordered by the court that said Ralph J. Wick, the receiver heretofore appointed, sell, assign, and transfer said judgment and claim
239 against Brown, Bonnell & Company to the purchaser upon receiving in payment therefor a sum not less than 60% of said sum of $11,988.39.

It is further ordered, by like consent, that the assignment and transfer of said receiver, upon receiving the purchase-money aforesaid, shall operate to transfer and convey to the purchaser full and perfect title and ownership to all of said claim and judgment, with the interest since accrued, but without recourse to any party herein.

It is further ordered that out of the money so to be received by said receiver that he pay the costs of said original case of the Leadville Coal Company against Brown, Bonnel & Company, and also the costs and amounts found due in the case of Charles S. Worden against the Leadville Coal Company, and that he hold said money subject to the further order of this court.

J. 37, p. 243. May term. July 5, '89.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY. } 656, 13071. C. A. & Redocketed.

Ralph J. Wick, the receiver heretofore appointed herein, having filed his final report herein, and the same having been examined by the court and found in all respects correct and in accordance with law and the former orders of this court, the same is approved by the court.

And it further appearing to the court that there is no
240 further property or funds in the possession of said receiver, and the court further finding that all the property and funds

has been disposed of by said receiver in accordance with the orders of this court and properly applied by him to the payment of the judgment heretofore rendered in favor of plaintiff, and there being no further duties to be performed by said receiver, it is ordered that he be discharged as such receiver and his bond as receiver released; and this cause is ordered to the execution docket.

241 Filed Jan. 18, 1884.

THE STATE OF OHIO, *Mahoning County.*

In the Circuit Court of Common Pleas.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY, THE PAINESVILLE AND Youngtown Railway Company, and Ralph K. Paige, Receiver; Brown, Bonnell & Company, and The Second National Bank of Youngstown, Ohio. } Petition.

The plaintiff says that the defendant, The Leadville Coal Company, is a mining corporation duly created, incorporated, and organized under and by virtue of the laws of the State of Ohio, and was at all the times hereinafter alleged.

That said defendant, The Painesville and Youngstown Railway Company, is a railroad corporation duly created and organized under the laws of the State of Ohio, and was at the time hereinafter alleged.

That the defendant, Ralph K. Paige, is the duly appointed, qualified, and acting receiver of said railway company, and has the control, possession, and charge of all the property and assets of said railway company, and as such receiver is engaged in operating the same.

That the defendant, Brown, Bonnell & Company, is a manufacturing corporation duly created and organized under the laws of said State, and was at all the times hereinafter alleged.

242 Plaintiff further says that the said defendant, The Second National Bank of Youngstown, Ohio, is a banking corporation duly and legally created under and by virtue of the laws of the United States of America, and was at all the times hereinafter set forth.

The plaintiff further says that by the consideration of this court at its January term for 1884, to wit, on the 16th day of January, A. D. 1884, he recovered a judgment against said defendant, The Leadville Coal Company, for the sum of eighteen thousand six hundred and eighty dollars ($18,680) and costs, taxed at — dollars, which judgment is still in full force, unreversed, and unsatisfied.

The plaintiff further says that execution has been duly issued on said judgment, and the same has been levied upon the interest of the Leadville Coal Company in the following real estate, to wit, situated in the township of Austintown, county of Mahoning and State of Ohio, bounded and described as follows:

Known as the homestead farm owned by Elizabeth Lonterman, bounded on the north by lands of William Lanterman and Maria Alders; on the east by lands of Jacob Leach, Winchester Meherman, and heirs of Peter L. Packard; on the south by lands of Daniel Moherman and Winchester Moherman, and on the west by the Raccoon road, containing about 434 acres of land, leaving and accepting therefrom twenty acres devised by said Elizabeth Lanterman by her last will, proved and of record in said county, to the heirs of Peter
24 L. Packard.
243 Also 270 acres, known as the Winchester Moherman farm, situated in the township, county, and State aforesaid, and for a further and more complete description see Records of Leases, vol. 2, page 26, of said Mahoning county.

Also the following articles of personal property, to wit: Forty tons of "T" rail, four blocks of seven double houses, tenements; one tenement house, one office, one powder-house, one mule barn, nine mules, one wagon, four sets of mule harness, sixty-eight bank cars, furniture and stove contained in said office building, one hoisting engine, one pumping engine, one lifting pump, one Cameron pump, one Cameron pump number nine, one hoisting cage, one railroad scale, one hoisting house dump, one three-ton scale, Schister's screws and track, one forty-ton scale, four tubular steel boiler stacks, feed pipe and feed pump, one blacksmith shop and tools, one engine-house, twenty tons of scrap iron, one hundred tons of ore, one hundred tons bunt ore, one rope and tackle, one small fan engine and house, one hoisting apparatus complete in Brown, Bonnell & Co.'-warehouse.

Plaintiff further says that the interest of said Leadville Coal Company in said lands arises by virtue of a lease made by the owners of said land granting to said Leadville Coal Company the right to enter upon said lands, dig, mine, and explore and take out any coal that may be in or under said lands, and that said Leadville Coal
Company is now engaged in the business of mining out the
244 coal under said land, and that the personal property hereinbefore described *are* part of the implements and machinery and so forth necessary in the operating of said coal bank and in the mining out of said coal; that it is impossible at present to determine as to the amount or extent or value of the coal in or under said land, and that the same cannot be sold without great loss and injury to the same; that said personal property is the machinery and appliances necessary for the successful carrying on of said business of mining out said coal, and that the sale of the same would result in great and irreparable loss or damage, not only to said Leadville Coal Company, but this plaintiff as a creditor of said Leadville Coal Company; that the same cannot be sold, for the reason that said Second National Bank of Youngstown, Ohio, has a mortgage upon said machinery and appliances and property therein set out, the amount of which has not been ascertained and of which plaintiff is ignorant, and therefore cannot determine the same without the finding of this court.

The plaintiff says that it is manifestly for the interest of said

Leadville Coal Company and for this plaintiff that said coal bank should continue to be operated and the coal taken out and sold in the ordinary way; that it will result in great saving to both of said parties; that any other course would result in great loss, as aforesaid.

The plaintiff further says that all of said property herein described in any manner will be entirely insufficient to pay the debt and judgment of plaintiff and wholly inadequate.

245 The plaintiff further says that the defendant, The Painesville and Youngstown Railway Company, and Ralph K. Paige, receiver, is indebted to said Leadville Coal Company in the sum of about six thousand dollars ($6,000), which is due and unpaid.

The plaintiff further says that the defendant, Brown, Bonnell & Company, is indebted in a large sum to said Leadville Coal Company, — the exact amount of which this plaintiff is ignorant, or the amount that will be finally collected from said Brown, Bonnell & Company.

Plaintiff further says that said Leadville Coal Company is in imminent danger of insolvency, and will be insolvent unless every effort is made to dispose of its property to the best advantage and to make the largest amount of money possible out of it.

This plaintiff avers that it is for the best interests of said Leadville Coal Company and its creditors that a receiver be appointed to take charge of all the said property herein described and operate said coal bank and dispose of the coal mined therefrom, as well as the property herein levied upon and herein described, and apply the same to the payment of the debt of plaintiff.

Wherefore plaintiff prays that said receiver may be appointed to take charge of said coal bank and property and operate the same in the ordinary and usual way of operating such mines and disposing of the product and applying the same to the debt of plaintiff,

246 and also that said receiver collect the amounts due from said Painesville and Youngstown Railway Company and from said Brown, Bonnell & Company, and that the same may be applied upon the debt of this plaintiff until the same shall be fully satisfied, and for such other and further relief as in equity and good conscience plaintiff may be entitled to.

The plaintiff further says that it has no adequate remedy at law, and therefore he brings this action for the purpose of reaching the interest of said defendant in the property and choses in action hereinafter set out, it being all the property owned by said defendant.

A. W. JONES,
Attorney for Plaintiff.

A. W. Jones, being duly sworn, says that he is the attorney for the said plaintiff, who is absent from said county, and that the facts alleged are true.

A. W. JONES.

Subscribed in my presence and sworn before me this 18th day of January, 1884.

[SEAL.] E. M. WILSON,
Notary Public.

Precipe.

Issue summons to sheriff of Lake county for P. & Y. R'y Co. and R. K. Paige, receiver, endorsed "equitable relief demanded."

A. W. JONES,
Attorney for Plaintiff.

247 We waive the issue and service of process and enter an appearance herein.

THE LEADVILLE COAL COMPANY,
By W. S. ANDERSON, *Its Attorney.*
BROWN, BONNELL & COMPANY AND
THE SECOND NATIONAL BANK
OF YOUNGSTOWN, O.,
By A. W. JONES, *Att'y.*

248 THE STATE OF OHIO, } ss:
Mahoning County, }

To the sheriff of Lake county:

You are commanded to notify the Painesville and Youngstown Railway Company and Ralph K. Paige, receiver (impleaded with others), that they have been sued by Charles S. Worden in the court of common pleas of Mahoning county, and that unless they answer by the 16th day of February, A. D. 1884, the petition of the plaintiff against them filed in the clerk's office of said court such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 28th day of January, A. D. 1884.

Witness Lloyd Fording, clerk of said court, and the seal thereof, at Youngstown, this 18th day of January, 1884.

LLOYD FORDING. *Clerk,*
[SEAL.] By A. O. FORDING,
Deputy Clerk.

Endorsed: No. 13071. Mahoning common pleas. Charles S. Worden, plaintiff, *vs.* Leadville Coal Company *et al.*, defendant. Summons. Equitable relief demanded. Returnable January 28th, 1884. Returned and filed January 21, 1884. A. W. Jones, plaintiff's attorney.

Sheriff's Return.

THE STATE OF OHIO, } ss:
Lake County, }

249 Received this writ January 29th, A. D. 1884, 9 o'clock a. m., and, pursuant to its command, on the same day and date I served this writ upon the within-named defendant, The Painesville and Youngstown Railway Company by delivering to J. A. Newcome, superintendent of said railway company, a true and certified

copy thereof, and on the same day and date I served this writ on the within-named defendant, Ralph K. Paige, receiver of said railway company, a like true and certified copy thereof.

A. D. BARRETT, *Sheriff.*

Sheriff's fees: Service, 50; mileage, 24; cop., 50; return and postage, 10; docket and recording, 20. Total, $1.54.

Fees paid by A. W. Jones for service of this summons.

250 Filed Jan. 19, 1884.

Receiver's Bond.

Whereas Ralph J. Wick was on the 18th day of January, A. D. 1884, duly appointed a receiver in the case of Charles S. Worden, plaintiff, against The Leadville Coal Company *et al.* defendants, now pending in the court of common pleas within and for the county of Mahoning and State of Ohio:

Now, therefore, we, Ralph J. Wick, as principal, and E. C. Wick, as surety, undertake to the State of Ohio for the use of the party entitled to the same, in the sum of twenty-five hundred dollars, the said Ralph J. Wick shall faithfully discharge the duties of receiver in the said action and obey the orders of the court herein.

RALPH J. WICK.
E. C. WICK.

I approve the above undertaking and the surety therein.

LLOYD FORDING,
Clerk of the Court of Common Pleas,
Mahoning County, Ohio.

Dated this 19th day of January, A. D. 1884.

Endorsed: Doc. 10, page 13071. Mahoning common pleas. Charles S. Worden against Leadville Coal Company. Receiver's bond. January 19th, 1884.

THE STATE OF OHIO, } *ss:*
Mahoning County, }

Ralph J. Wick makes solemn oath that he will faithfully
251 perform the duties of receiver in the within cause of Charles S. Worden, plaintiff, against The Leadville Coal Company *et al.*, defendants.

RALPH J. WICK.

The above was signed by said Ralph J. Wick in my presence and sworn to by him this 19th day of January, A. D. 1884, before—

LLOYD FORDING,
Clerk Common Pleas Court.

Filed Feb. 7th, 1884.

Assets of the Leadville Coal Company as shown by their books January 19th, 1884, taken possession — by Ralph J. Wick, receiver, by order of Mahoning county common pleas court, January 19th, 1884.

Brown, Bonnell & Company, book acc't	3,131 42
Fayette Brown, receiver, " "	2,119 79
Painesville & Youngstown R. R. Co	5,827 50
W. F. Endress	15 00
Briar Hill Iron & Coal Co.	275 98
Bills payable B., B. & Co., notes now in judgment	8,482 39
	$19,852 08

I certify that the above is a true and correct copy of the book assets of the Leadville Coal Company on the morning of January 19th, 1884.

RALPH J. WICK, *Receiver.*

252 Filed Feb'y 9, 1884.

Leadville Coal Company Personal Property Taken Possession of by Ralph J. Wick, Receiver, under an Order of Court January 19th, 1884.

40 tons of T rail in mine, @ $30	$1,200 00
4 blocks of tenement-houses 6 double " " 1 single boarding " 1 " tenement "	1,800 00
1 office	50 00
1 brick powder-house	25 00
1 mule barn	75 00
9 mules, @ $100	900 00
1 double wagon	20 00
1 set double harness	25 00
9 " single "	75 00
68 bank cars, @ $7	476 00
Office furniture and safe	25 00
1 hoisting engine, gearing, and drum	700 00
1 pumping " " " lifting pump	3,800 00
1 12 x 24 x 36 Cameron pump in mine	600 00
1 #9 Cameron pump	300 00
1 hoisting cage	50 00
1 hoisting-house, dump screens, chutes, tracks, one three-ton miner's scale, and one 40-ton track scale	2,000 00
4 tubular or steel boilers, stacks, feed pump, feed, and pipes	2,000 00
1 blacksmith shop and tools	75 00
1 engine-house	100 00
20 tons scrap iron, @ $8	160 00

copy thereof, and on the same day and date I served this writ on the within-named defendant, Ralph K. Paige, receiver of said railway company, a like true and certified copy thereof.

A. D. BARRETT, *Sheriff.*

Sheriff's fees: Service, 50; mileage, 24; cop., 50; return and postage, 10; docket and recording, 20. Total, $1.54.

Fees paid by A. W. Jones for service of this summons.

250 Filed Jan. 19, 1884.

Receiver's Bond.

Whereas Ralph J. Wick was on the 18th day of January, A. D. 1884, duly appointed a receiver in the case of Charles S. Worden, plaintiff, against The Leadville Coal Company *et al.* defendants, now pending in the court of common pleas within and for the county of Mahoning and State of Ohio:

Now, therefore, we, Ralph J. Wick, as principal, and E. C. Wick, as surety, undertake to the State of Ohio for the use of the party entitled to the same, in the sum of twenty-five hundred dollars, the said Ralph J. Wick shall faithfully discharge the duties of receiver in the said action and obey the orders of the court herein.

RALPH J. WICK.
E. C. WICK.

I approve the above undertaking and the surety therein.

LLOYD FORDING,
Clerk of the Court of Common Pleas,
Mahoning County, Ohio.

Dated this 19th day of January, A. D. 1884.

Endorsed: Doc. 10, page 13071. Mahoning common pleas. Charles S. Worden against Leadville Coal Company. Receiver's bond. January 19th, 1884.

THE STATE OF OHIO, } *ss:*
Mahoning County, }

Ralph J. Wick makes solemn oath that he will faithfully
251 perform the duties of receiver in the within cause of Charles S. Worden, plaintiff, against The Leadville Coal Company *et al.*, defendants.

RALPH J. WICK.

The above was signed by said Ralph J. Wick in my presence and sworn to by him this 19th day of January, A. D. 1884, before—

LLOYD FORDING,
Clerk Common Pleas Court.

Filed Feb. 7th, 1884.

Assets of the Leadville Coal Company as shown by their books January 19th, 1884, taken possession — by Ralph J. Wick, receiver, by order of Mahoning county common pleas court, January 19th, 1884.

Brown, Bonnell & Company, book acc't	3,131 42
Fayette Brown, receiver, " "	2,119 79
Painesville & Youngstown R. R. Co	5,827 50
W. F. Endress	15 00
Briar Hill Iron & Coal Co.	275 98
Bills payable B., B. & Co., notes now in judgment	8,482 39
	$19,852 08

I certify that the above is a true and correct copy of the book assets of the Leadville Coal Company on the morning of January 19th, 1884.

RALPH J. WICK, *Receiver.*

252 Filed Feb'y 9, 1884.

Leadville Coal Company Personal Property Taken Possession of by Ralph J. Wick, Receiver, under an Order of Court January 19th, 1884.

40 tons of T rail in mine, @ $30	$1,200 00
4 blocks of tenement-houses 6 double " " 1 single boarding " 1 " tenement "	1,800 00
1 office	50 00
1 brick powder-house	25 00
1 mule barn	75 00
9 mules, @ $100	900 00
1 double wagon	20 00
1 set double harness	25 00
9 " single "	75 00
68 bank cars, @ $7	476 00
Office furniture and safe	25 00
1 hoisting engine, gearing, and drum	700 00
1 pumping " " " lifting pump	3,800 00
1 12 x 24 x 36 Cameron pump in mine	600 00
1 #9 Cameron pump	300 00
1 hoisting cage	50 00
1 hoisting-house, dump screens, chutes, tracks, one three-ton miner's scale, and one 40-ton track scale	2,000 00
4 tubular or steel boilers, stacks, feed pump, feed, and pipes	2,000 00
1 blacksmith shop and tools	75 00
1 engine-house	100 00
20 tons scrap iron, @ $8	160 00

100 tons Green B. B. ore, @ $1.50	$150 00
100 tons Buart " " @ $4.00	400 00
1 tackle block and rope	50 00
1 hoisting apparatus in B., B. & Co. warehouse, Youngstown, O.	2,500 00
	$17,906 00

L. BOOTH,
JOHN MORRIS, JR.,
C. F. WALKER,
Appraisers.

253 Filed Sept. 23, '84.

Statement of Receipts and Disbursements of Ralph J. Wick, Receiver of the Leadville Coal Company, from January 18th, 1884, to September 18th, 1884.

Receipts.

1884.				
Feb.	8.	From	Fayette Brown, rec'r of Brown, Bonnell & Co.	$4,501 30
"	16.	From	Briar Hill Iron & Coal Co.	881 23
"	19.	"	coal sold at mine Jan. 1 to 18, '84	14 80
"	19.	"	" " " " " 18 to 31, '84	7 87
"	19.	"	over from paying men " " " "	11
"	19.	"	" " " " " " 18, "	50
"	19.	"	unearned premium on cancelled insurance	3 00
M'ch	6.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	7,089 32
"	8.	"	coal sold in mine in February	19 97
"	8.	"	Mahoning Coal Co., collection for their cr.	28 00
"	12.	"	old wire rope sold acc't Leadville Coal Co.	15 00
Apr.	10.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	7,330 22
"	12.	"	Mahoning Coal Co., collection for their cr.	26 00
"	12.	"	coal sold at mines in March	18 75
"	12.	"	iron " " " " "	75
"	12.	"	weighing hay " " "	30
"	12.	"	telephone service	35
"	12.	"	Pittsburgh Telegraph Co., collection for their cr.	26 25
May	9.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	5,192 86
"	10.	"	Mahoning Coal Co., collection for their cr.	30 00

1884.				
May	10.	From	coal sold at mines in April	$9 92
"	10.	"	oats " " " " "	10
"	10.	"	weighing hay at mines in April and use of telephone	35
June	10.	"	Briar Hill Iron & Coal Co.	984 20
"	13.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	6,298 16
"	14.	"	Mahoning Coal Co., collection for their cr.	33 00
July	11.	"	coal sales at mine in June	6 16
"	11.	"	Mahoning Coal Co., collection for their cr.	27 75
"	11.	"	Briar Hill Iron & Coal Co.	1,068 67
"	11.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	2,022 71
Aug.	9.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	1,800 00
"	9.	"	coal sales in July	6 45
254				
Aug.	29.	From	Fayette Brown, rec'r of Brown, Bonnell & Co.	674 34
Sept.	2.	"	old mule sold for acc't Leadville Coal Co.	25 00
"	12.	"	coal sold at mines in August	13 97
"	12.	"	nails and smithing sold August	20
"	12.	"	Fayette Brown, rec'r of Brown, Bonnell & Co.	3,783 09
				$41,940 75

Recapitulation.

Receipts	$41,940 75
Disbursements	40,832 64
Balance on hand	$1,108 11

Disbursements.

				Voucher.	
1884.					
Feb.	9.	Paid	Leadville Coal Co. pay-roll, Jan. 1 to 18	#1--	$1,832 40
"	9.	"	receiver's pay-roll, Jan. 18 to 31	1--	1,964 34
"	9.	"	expense	2--	1 00
"	11.	"	Gilman, Wilson & Co.	3--	7 50
"	12.	"	expense	4--	2 00
"	13.	"	Fowler, Stambaugh & Co.	5--	100 95
"	13.	"	expense	6--	1 50
"	13.	"	Central Union Telephone Co.	7--	39 75
"	15.	"	Manning, McKeown & Co.	8--	8 00
"	15.	"	J. Resch & Son	9--	5 06

1884.				Voucher.	
Feb.	16.	Paid	expense	10--	$2 36
"	18.	"	2nd Nat. Bank, balance mortgage and interest	11--	935 47
"	22.	"	expense	13--	2 25
"	23.	"	"	14--	30
"	25.	"	"	15--	2 00
M'ch	3.	"	Ohio Powder Company	16--	1 50
"	4.	"	R. J. Wick, receiver, service, Jan. 18 to M'ch 1	17--	300 00
"	4.	"	W. T. Anderson, att'y	18--	25 00
"	4.	"	expense	19--	1 80
"	8.	"	Winchester Moherman	20--	250 00
"	8.	"	expense	21--	1 42
"	8.	"	Winchester Moherman	22--	139 99
"	8.	"	pay-roll for February	23--	5,622 94
"	10	"	Mahoning Coal Company	24--	28 00
"	12.	"	J. Resch & Son	25--	6 69
"	12.	"	Booth, Miller & Co.	26--	3 25
"	12.	"	Andrews, Hill & Co.	27--	270 00
255					
M'ch	12.	Paid	expense	28--	37 50
"	31.	"	R. J. Wick, rec., service for M'ch	29--	200 00
"	31.	"	expense	30--	4 00
"	31.	"	W. S. Kyle, guardian	31--	22 91
"	31.	"	expense	32--	25
Apr.	3.	"	J. H. Bushnell	33--	5 45
"	3.	"	Winchester Moherman	34--	300 00
"	5.	"	expense	35--	15
"	5.	"	Fowler, Staumbaugh & Co.	36--	116 58
"	5.	"	Erskine & Co.	37--	3 60
"	5.	"	Youngstown Lumber Co.	38--	2 05
"	5.	"	Andrews, Hill & Co.	39--	135 00
"	7.	"	Youngstown Lumber Co.	40--	10 20
"	11.	"	expense	41--	1 00
"	12.	"	pay-roll for March	42--	6,052 95
"	12.	"	Pittsburgh Telegraph Company	42--	20 25
"	12.	"	Short & Foreman	43--	26 25
"	14.	"	Mahoning Coal Co.	44--	34 24
"	16.	"	Ran & Avery & Co.	45--	5 00
"	17.	"	expense	46--	50
May	5.	"	R. J. Wick, rec., service for Apr.	47--	200 00
"	5.	"	Stambaugh, Thompson & Co.	48--	195 13
"	5.	"	Erskine & Co.	49--	5 69
"	5.	"	Ohio Powder Co.	50--	258 95
"	10.	"	pay-roll for April	51--	4,622 25
"	10.	"	expense	52--	1 00
"	14.	"	Harney & Harney	53--	44 00
"	14.	"	Central Union Telephone Co.	54--	39 75
"	14.	"	Mahoning Coal Company	55--	45 00

1884.				Voucher.	
May	19.	Paid	Winchester Moherman	56--	510 82
"	28.	"	R. J. Wick, rec., service for May	57--	200 00
"	28.	"	A.W.Jones, att'y, acc't C.S.Worden	58--	200 00
"	29.	"	Allen, Hellawell & Son	59--	4 20
June	7.	"	Stambaugh, Thompson & Co.	60--	38 67
"	7.	"	J. Resch & Son	61--	4 43
"	9.	"	Winchester Moherman	62--	250 00
"	12.	"	Morris Hardware Co.	63--	107 35
"	14.	"	pay-roll for May	64--	5,956 31
"	16.	"	Winchester Moherman	65--	51 56
"	16.	"	supply (hay)	66--	10 03
"	16.	"	D. Theobald & Co. & expense	67--	6 50
"	20.	"	Mahoning Coal Co.	68--	60 00
"	23.	"	Winchester Moherman	69--	364 99
July	9.	"	F. E. Ritteman, treas.	70--	6 68
"	9.	"	Morris Hardware Co.	71--	26 69
"	11.	"	Youngstown Lumber Co.	72--	5 13
"	11.	"	pay-roll for June, supply and expense	73--	2,485 11
"	14.	"	Andrew Wilson	74--	7 57
"	14.	"	expense	75--	2 16
"	15.	"	Mahoning Coal Co.	76--	45 75
"	15.	"	expense	77--	2 00
"	15.	"	J. H. Bushnell	78--	2 75
"	21.	"	Winchester Moherman	79--	132 86
"	22.	"	expense	80--	10 00
"	22.	"	J. B. Drake	81--	3 00
Aug.	9.	"	pay-roll for July	82--	1,789 63
256					
Aug.	9.	Paid	supply	83--	45
"	18.	"	"	84--	17 85
"	18.	"	expense	85--	260 00
"	26.	"	Central Union Telephone Co.	86--	39 75
"	26.	"	Ohio Powder Co.	87--	127 00
"	27.	"	Winchester Moherman	88--	196 21
"	28.	"	R. J. Wick, rec., service for June	89--	200 00
Sept.	1.	"	Gilman, Wilson & Co.	90--	1 76
"	3.	"	R. J. Wick, rec., service for July	91--	200 00
"	8.	"	Winchester Moherman	92--	250 00
"	12.	"	pay-roll for August	93--	3,026 31
"	15.	"	Morris Hardware Co.	94--	53 83
"	15.	"	R. J. Wick, rec., service for Aug.	95--	200 00
"	16.	"	expense	96--	2 50
"	18.	"	Mahoning Coal Co.	97--	27 67
					$40,832 64

257 Filed Jan'y 20, '85.

Statement of Receipts and Disbursements of Ralph J. Wick, Receiver of the Leadville Coal Company, from September 18th, 1884, to January 20th, 1885.

Receipts.

1884.				
Sept.	18.		Balance on hand, as per statement rendered	$1,108 11
Oct.	10.		From Fayette Brown, rec'r, on ac. September coal	3,500 00
"	11.	"	rent for October	14 50
"	11.	"	on ac. mule sold	10 00
"	11.	"	coal sold at mine in September	16 08
"	11.	"	telephone company sold at mine	35
Nov.	27.	"	Fayette Brown, rec'r, balance for September coal	673 95
Nov.	7.	"	Fayette Brown, rec'r, acc't Oct. coal	3,500 00
"	7.	"	on acc't of mule sold	10 00
"	8.	"	coal sold at mine in October	34 36
"	20.	"	Fayette Brown, rec'r, balance for October coal	195 86
Dec.	11.	"	Fayette Brown, rec'r, November coal	1,272 26
"	11.	"	Mahoning Coal Co. on ac.	100 00
"	12.	"	balance due on mule sold	20 00
Dec.	12.	"	coal sold at mine in November	65 58
"	12.	"	rent in November	12 30
"	16.	"	Chisholm & Parrish for coal	23 24
"	22.	"	N. Y., P. & O. R. R. Co., ac. rebate	20 55
"	24.	"	telephone company sold to J. F. Taylor	1 00
"	24.	"	Mahoning Coal Co. to balance ac.	201 71
1885.				
Jan.	3.	"	T iron sold at mine to A. Wolfcale	3 12
"	3.	"	sole leather sold at mine to Resch & Son	3 00
"	5.	"	J. M. Walters & Co. for 6 mules and harness	500 00
"	7.	"	T iron sold at mine	8 75
"	7.	"	¾ " " " "	15
"	7.	"	coal sold at mine in December	16 95
"	7.	"	Fayette Brown for December coal	800 00
"	9.	"	J. R. Bailey & Co. for coal in October	10 36
"	10.	"	Mahoning Coal Co., 1 mule	150 00
"	16.	"	J. M. Walters & Co. for mule harness	20 00
"	19.	"	Chisholm & Parrish for coal in Dec.	48 93
"	20.	"	Briar Hill Iron & Coal Co. for B., B. & Co. ore	1,330 50
				$13,671 61

258 Disbursements.

1884.				Voucher.	
Oct.	12.	Paid	pay-roll for Sept., '84	104--	3,348 91
"	12.	"	expense, Sept. 29th	98--	30 00
"	12.	"	" Oct. 2nd	98--	18 14
"	12.	"	Ralph J. Wick for services for September	99--	200 00
"	12.	"	W. Moherman, bal. due on Aug. royalty	100--	189 11
"	4.	"	Standard Oil Co., ins. 9–25, less 2 %	101--	10 29
"	4.	"	Ohio Powder Co., ins. 8–21, less deduction	102--	126 85
"	6.	"	Stambaugh & Thompson, ac. Aug. — Sept.	103--	77 76
"	13.	"	insurance renewals on property	108--	94 00
"	11.	"	for 109⅝⅛ bush. oats @ 32c.	105--	35 18
"	11.	"	Erskine & Co., invoice 8–5	106--	5 30
"	13.	"	W. H. Woodrow, invoice 9–21	107--	6 00
"	13.	"	Morris Hardware Co., ac. for Sept.	108½	1 93
"	13.	"	rent refunded to D. D. Jones	109--	2 30
"	24.	"	H. H. Byers for hay	110--	50 99
"	25.	"	Montgomery & Co., for scrap lead, 52c.	111--	77
		"	expense on cage springs from Pitts., 25c.	& 111½	
"	28.	"	Haney & Haney, renewal of insurance	112--	50 00
"	28.	"	W. Moherman, royalty for September	113--	448 02
"	31.	"	Ralph J. Wick for services for October	114--	200 00
Nov.	3.	"	Mahoning Coal Co., balance ac.	115--	32 50
"	6.	"	Manning, McKeown & Co., acc't supplies	116--	5 85
"	8.	"	4,420 caps @ $4.00	117--	17 68
					4,951 58

(Continued.)

1884.				Voucher.	
Nov.	8.	Paid	pay-roll for Oct., '84	118--	3,334 97
	10.	"	G. B. Burwell & Co., ag'ts, boiler ins.	119--	62 50
	10.	"	Morris Hardware Co., ac. for Oct.	120--	11 18
	21.	"	Winchester Moherman, royalty Oct.	121--	157 64
	21.	"	Telephone rental, 10–1–'84 to 12–31–'84	122--	39 75
Dec.	1.	"	Dr. J. E. Woodbridge, medical services	123--	43 00
	3.	"	J. R. Davis, ag't, insurance	124--	3 00

1884.			Voucher.	
Dec.	4.	Paid Morris Hardware Co., ac. for Nov..	125..	29 99
	6.	" Ohio Powder Co., ins. 11–15, less deduction	126..	37 91
	6.	" Girard Stove W'ks, ins. 11–3	127..	5 00
259				
Dec.	12.	Paid pay-roll for November	128..	1,340 98
	12.	" H. H. Byers for hay	129..	30 34
	20.	" Dr. R. W. Whiteside, attending mule in April	130..	3 00
	24.	" Austin Andrews, guardian, in full for advance of royalty on Packard lease	131..	54 40
	24.	" R. J. Wick, service for November	131½	200 00
	26.	" expenses, Buffalo & Canada	132..	49 65
	31.	" J. H. Bushnell, ins. 7–28	133..	1 25
	31.	" telegraph account	134..	31
	31.	" expenses to Sharon	135..	1 50
1885.				
Jan'y	2.	" A. B. Brownell & Co., ins. 12–23	136..	1 25
	2.	" W. S. Douglass, " 2–13	137..	12 00
	3.	" J. Resch & Son, " 1–2	138..	12 90
	6.	" Youngstown C. & W. Co., acc't	139..	2 45
	7.	" pay-roll for December	140..	1,271 51
	8.	" Standard Oil Co., ins. 11–10	141..	47 24
1885.				
Jan'y	19.	" R. J. Wick, services for December	142..	200 00
	19.	" A. W. Jones for legal services	143..	600 00
				12,505 30

Recapitulation.

Receipts, including last bal.	13,671 61
Disbursements	12,505 30
Balance on hand	$1,166 31

260 *Statement of Receipts and Disbursements of Ralph J. Wick, Receiver of the Leadville Coal Company, from January 20th, 1885, to April 25th, 1885.* (*Filed Apr. 28th, 1885.*)

Receipts.

Jan.	20.	On hand as per last statement	1,166 31
"	24.	From George P. Barwell, ag't, unearned premium on boiler insurance	43 50
"	28.	Fayette Brown, rec'r, to balance December coal account	83 90
"	30.	From Abraham Wolfcale, for harness	15 00

Feb'y	18.	From	Fayette Brown, rec'r, from coal	217 19	
Apr.	6.	"	N. Y., P. & O. R. R. Co., ac. rebate	5 16	
"	21.	"	H. Libbett for office desk	7 00	
					1,538 06

Disbursements.

Jan.	26.	Paid	R. J. Wick, rec'r, services for January, voucher # 144	200 00	
Feb'y	28.	"	freight on hoisting machinery, voucher 45.		
"	"	"	returned by H. Crawford, vou. 149	98 25	
"	"	"	Pa. Co. for switching same	2 00	
261					
M'ch	3.	From	Harvey & Harvey, insurance, invoice 2–14th, vou. # 146	49 65	
"	7.	"	R. J. Wick, service as rec'r for the month of Feb'y, vou. 150	200 00	
"	31.	"	" " " March	200 00	
Apr.	16.	"	Appraisers this date, vou. # 148	15 00	
	24.	"	R. J. Wick, service for the mo. of April, 1885, vou. 151	200 00	
					964 90
			Balance on hand 4, 25, 85		573 16

THE STATE OF OHIO, *Mahoning County*, } ss:

In the Common Pleas Court.

(Filed Apr. 29th, 1885.)

CHARLES S. WORDEN, Pl'ff, *against* LEADVILLE COAL COMPANY. } January Term, 1885. Journal, vol. 27, page 470. Certified Copy of Journal Entry. Civil Action.

Ralph J. Wick, the receiver heretofore appointed, having, on the 23rd day of September, 1884, and again on January 17, 1885, filed herein his report of his transactions as such receiver, and also an itemized account of his receipts and expenses up to and including said 17th day of January, 1885, which reports being submitted to the court for examination, it is found by the court that all the transactions of said receiver up to and including said 17th day of January, 1885, have been correct, in pursuance of and in conformity with law and the former order of this court; and the court further find that said report of receipts and expenditures *are* in like manner correct and do approve the same, and that the balance shown in the hands of said receiver is in all respects correct; and it
262 being shown to the court that it is for the best interests of all the parties herein that the property still remaining in the

hands of the receiver be sold and the same applied to the judgment of the plaintiff, and upon application of the plaintiff and upon due notice to the defendant and upon good cause shown, it is ordered by the court that all the balance of the property belonging to said defendant and in the possession or under the control of said receiver shall be appraised by three disinterested persons, to be selected by said receiver, and after such appraisement said receiver is ordered and directed to sell said property at private sale for cash at a sum not less than two-thirds of its appraised value, and said receiver is directed to make said sale within sixty days from the first day of March, 1885, and from the proceeds of said sale he is ordered to pay—

First. The costs of this suit.

Second. The salary of said receiver, and the balance, if any, he shall pay to plaintiff or his attorneys, to apply upon the judgment alleged in this case until the same is paid in full.

THE STATE OF OHIO, } *ss:*
Mahoning County, }

I, Lloyd Fording, clerk of the common pleas court within and for said county, and in whose custody the files, journals, and records of said court are required by the laws of the State of Ohio to
263 be kept, hereby certify that the foregoing is well taken and truly copied from the Journal No. 27, page 470, of the proceedings of the common pleas court within and for said county, and that said foregoing copy has been compared by me with the original entry on said Journal No. 27, page 470, and that the same is a correct transcript thereof.

In witness whereof I do hereto subscribe my name officially and affix the seal of said court, at the court-house, in Youngstown, in said county, this 13 day of February, A. D. 1885.
[SEAL.]

LLOYD FORDING, *Clerk,*
By A. O. FORDING,
Deputy Clerk.

Inventory and appraisement of personal property of the Leadville Coal Company in the hands of Ralph J. Wick, receiver (located at the mines), April 16, 1885. Appraised by Lloyd Booth, John W. Brown, and John F. Taylor.

40 tons 12-lb. T-iron rails, $20	800 00
4 blocks, 6 ea., houses 6 " " " 2 single " and office	1,275 00
1 powder-house	20 00
1 mule barn	40 00
1 double wagon	15 00
Mule harness (old)	5 00
68 pit cars, $4.00	272 00
Office furniture and safe	15 00
1 hoisting engine, drum, and gearing	500 00
1 pumping " lifting pump, & gearing	3,000 00

1 12 x 24 x 36 Cameron pump		400 00
1 # 9 " "		200 00
1 hoisting cage		30 00
1 " house, fipple screw Schute, track, scales		1,200 00
4 tubular boilers (steel), stacks, feed pump, and pipes		1,200 00
1 blacksmith shop and tools		50 00
1 engine-house		100 00
20 tin scrap (mixed), $5.00		100 00
264 1 set tackle blocks		25 00
1 fan engine and house		150 00
		$9,397 00

Appraisers:
LLOYD BOOTH.
JNO. W. BROWN.
JOHN F. TAYLOR.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY.

In pursuance *to* the order heretofore made in this case, I duly selected and summoned Lloyd Booth, John W. Brown, and John F. Taylor to appraise the property of said Leadville Coal Company on April 16th, 1885, and after being duly sworn they did appraise all the property of said company at the sum of nine thousand three hundred and ninety-seven dollars ($9,397.00), as will more fully appear by a copy of their inventory and appraisement returned herewith.

After said appraisement and in pursuance of the order of this court I sold all of said property at private sale to Peter L. Kimberly on April 25th, 1885, for the sum of six thousand two hundred and sixty-five dollars ($6,265.00) cash in hand, the same being more than ⅔ of the appraised value of said property and being the highest and best price I could obtain for said property, and out of said amount I have paid Lanterman and Kimberly the sum of one thousand seven hundred eighty-seven and sixty-five one-hundredths dollars ($1,787.65) for rent or royalty of coal mined in pursu-
265 ance of former orders of this court.

Leaving a balance in my hands arising from this sale of four thousand four hundred and seventy-seven and thirty-five one-hundredths dollars ($4,477.35) to be distributed under the orders of this court.

Witness my hand this 25th day of April, A. D. 1885.

RALPH J. WICK,
Receiver of the Leadville Coal Company.

To the honorable the court of common pleas of Mahoning county, Ohio:

The undersigned, having been heretofore appointed appraisers of

the personal property unsold belonging to the defendant in the case of Charles S. Worden *vs.* The Leadville Coal Company, after being first duly sworn, upon our oaths say that we do appraise the coal-bank hoist and engine at the sum of two thousand dollars ($2,000.00).

Witness our hands this 26th day of June, 1886.

LLOYD BOOTH.
JOHN S. BESORE.
JOHN M. WALTER.

Filed June 28th, 1886.

266 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

CHARLES S. WORDEN
versus
THE LEADVILLE COAL COMPANY. } Receiver's Report.

Ralph J. Wick, receiver, now reports to the court as follows:

Amount in his hands as per report of April 26th, 1885:

Balance for sale to Kimberly	$4,477	35
Balance from general account, as per statement filed April 28, '85	573	16

I have since received as follows:

May 8th. Received from N. Y., P. & O. R. R. Co. rebate due on coal shipped to Buffalo	16	03
June 1st. From John W. Brown for one lounge sold	10	00
" " " Booth, Miller & Co. for one valve stem, sold through them to W. W. Williams	8	63
" " " Booth, Miller & Co. for scrap brass	89	
	$5,086	06

In pursuance of the order of this court made July 2nd, 1886, I sold said machinery to said Webster, Camp and Lane Machine Company for the sum of $2,000.00, as directed in said order, which money I received Oct. 4th, 1886, and I thereupon charged myself with said sum—$2,000.00.

267 I have at this date received from R. K. Page, receiver of the P. & Y. R'y Co., the sum of $7,817 30

Making a total $14,903 36

This is the full amount of money I have received up to the filing of this statement. I have disbursed with said money under the order of the court as follows:

1885.

May 7th. Mahoning Coal Company	$27	85
" " Fayette Brown, receiver	68	47

1885.		
May 18th.	Lloyd Fording, clerk	$39 52
June 12th.	Manning, McKeown & Company	4 85
May 19th.	C. S. Worden	4,437 83
July 10th.	C. S. Worden	507 84
1886.		
July —.	Paid expenses of loading machinery	14 00
July —.	Paid other expenses	25 00
" —.	Paid appraisers	15 00
Oct. 11th.	Paid C. S. Worden	1,800 00
Oct. —.	Paid myself as receiver, as per allowance of July 2d, 1886	200 00
		$7,140 56
	Balance in my hands subject to the order of the court	$7,762 80

The receiver further says that in pursuance of the orders of this court he has sold, collected, and accounted for all property and assets of said Leadville Coal Company except a certain judgment of said Leadville Coal Company against Brown, Bonnell & Company, which appears upon the execution docket, page —, of this court, amounting to the sum of —, which judgment I have been unable to collect.

RALPH J. WICK, *Receiver.*

268 *Report of the Receiver.* (*Filed July* 15, 1889.)

THE STATE OF OHIO, *Mahoning County,* } *ss:*

In the Court of Common Pleas.

CHARLES S. WORDEN
vs.
THE LEADVILLE COAL COMPANY.

The undersigned, the receiver heretofore appointed herein, now comes and makes report to the court that, in pursuance of the order hereinbefore made, he has sold to Edward E. Ayer the judgment obtained in the case of the Leadville Coal Company against Brown, Bonnell and Company, and has made an assignment to him of said judgment for the consideration of the sum of seven thousand one hundred and ninety-three and $\frac{3}{100}$ dollars ($7,193.03) in hand paid to me, and I have paid out — said fund, in pursuance of the former orders of this court, as follows:

To A. W. Jones	$817 30
" court costs	72 15
" expenses paid by me	344 61
" Charles S. Worden	5,958 97
	$7,193 03

And I further report that there is no other funds or property in my hands, and I therefore ask that my account, report, and
269 transaction be approved and confirmed by the court, and that I be discharged as receiver.

RALPH J. WICK, *Receiver.*

In the Court of Common Pleas.

CHARLES S. WORDEN,
vs.
THE LEADVILLE COAL COMPANY, THE PAINESVILLE AND YOUNGSTOWN Railway Company, and Ralph K. Page, Receiver; Brown, Bonnell & Company, and the Second National Bank of Youngstown, O.

I, Z. P. Curry, clerk of the court of common pleas of Mahoning county, Ohio, do hereby certify that the foregoing transcript contains due and correct copies of the process issued in the above-entitled cause, and also true and correct copies of all pleadings, papers, docket and journal entries, and all other proceedings in said cause, except the receiver's vouchers, Nos. 1 to 97, inclusive, filed Sept. 23rd, 1884.

Witness my signature as such clerk and the seal of said court, at Youngstown, this 26th day of August, A. D. 1890.

[SEAL.] Z. P. CURRY, *Clerk,*
By F. E. PROBST, *Deputy Cl'k.*

270 And afterwards, to wit, on October 1st, 1890, an answer was filed in this cause, which is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

LAKE SUPERIOR IRON CO. *et al.*
vs.
BROWN, BONNELL & COMPANY.

Answer to the Petition of the Leadville Coal Company and Charles S. Worden.

The complainants, The Lake Superior Iron Company and The Jackson Iron Company and The Importers' & Traders' National Bank, for themselves and all other creditors of Brown, Bonnell & Company herein, saving and reserving all manner of exception and objection to the so-called petition of the Leadville Coal Company and Charles S. Worden, filed herein on the 22nd day of September, 1890, for insufficiency, as out of order, filed without leave of court, and endeavoring to again litigate matters in this suit long since determined and adjudicated by this court, and the Supreme Court of the United States affirming the decree of this court, under protest, in answer to said petition, deny that said Charles S. Worden was when

this suit was commenced or is now a creditor of Brown, Bonnell & Company on any liability, direct or contingent, or held such demand or debts as are alleged in said petition.

They say that the judgment recovered in the court of common pleas of Mahoning county by said Leadville Coal Company as there set forth was for the same debt already presented and proved
271 by it in this cause, and that said debt is already included in the decree heretofore rendered in this cause and shares in the judicial distribution of the assets of the corporation in the same *pro rata* with other creditors of said corporation, but they say that said claim is no longer owned by said Leadville Coal Company, the court of common pleas in and for Mahoning county having heretofore appointed a receiver of the assets of said company and said claims having been duly sold at judicial sale to —— Ayer.

They further say that said alleged judgment in favor of Charles S. Worden was without consideration and was by collusion between said Charles S. Worden and H. C. Ayer, the president of said corporation, Brown, Bonnell & Company, who caused Henry Crawford, then and now the solicitor of said Worden, to confess the same against said Brown, Bonnell & Company, and that the same is fraudulent and void.

They admit that at the commencement of the suit Brown, Bonnell & Company was insolvent and its assets insufficient to pay its costs.

They deny that no dividend decree has never been entered or the rights of the creditors been finally adjudged and decreed, everything having been done save the distribution among creditors of the assets when realized, and deny that the court should make any order of distribution other than in accordance with the rights of creditors as already determined in said decree. They admit that the claims of Greenville National Bank and others named were included in said decree, though the names and amounts are inaccurately stated,
272 and complainants refer to said decree for more accurate statement thereof.

They deny that some of said creditors were at the commencement of this cause creditors of said Brown, Bonnell & Company. They admit that said claims were partly, but not wholly, against said Brown, Bonnell & Company as endorsers, reference again being made to said decree and the report of the master on which the same was based. They deny that the notes or other commercial paper included therein were not presented for payment at the respective places for payment when due, or that the same were not presented, or that the notice of said presentment and non-payment *were* not given to said Brown, Bonnell & Company, or that there was any want of due diligence in regard thereto, or that said Brown, Bonnell & Company was discharged therefrom, or that said liabilities or claims have no right to share in the assets of said Brown, Bonnell & Company.

They deny that the hearing before the master was *ex parte;* that there was no notice to any creditors of the time and place of hearing.

They admit that in most of said claims no defense was made, but for the reason that none could be.

They deny that no evidence was introduced to sustain them or to show such presentment, demand, protest, and notice, or that the allowance of any of said claims was made without any evidence whatever.

273 They deny that said judgments asserted by petitioners are any liens on the real estate involved in this case.

And these respondents further say that the claim which said Charles S. Worden now attempts to set up is stale in equity; that said Charles S. Worden had full knowledge of the pendency of this cause and all proceedings heretofore had therein, and actually appeared herein as early as March 1st, 1884, and at other dates, and yet said Worden neglected and refused to prove his alleged claim or submit it to this court for adjudication until after the sale made by the special master; wherefore these respondents deny that said Worden is at this late day entitled to open up the decree heretofore rendered in this cause and affirmed by the Supreme Court and to now litigate in respect to the matters set forth in the petition filed by him and the Leadville Coal Company.

C. D. HINE & C. C. BALDWIN,
Solicitors, &c.

274 And afterwards, to wit, on October 1, 1890, an answer was filed in this cause, which is in the words and figures following, to wit:

In the United States Circuit Court, Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & Co., a Corporation, &c.

Answer to the petition of the Leadville Coal Company and Charles S. Worden.

The Greenville National Bank, the Girard Savings Bank, the First National Bank of Garrettsville, the First National Bank of Youngstown, O.; R. S. Walker, W. R. Errett, George D. Wick, the First National Bank of Mercer, Pa.; the Commercial National Bank of Cleveland, O.; Lorenzo Lane, Henry Wick & Company, Wick Brothers & Company, Pratt & Company, the Pennsylvania —, the National Bank of West Virginia, the National Bank of Fayette County, the Citizens' National Bank of Pittsburgh, the Geauga Savings & Loan Association (called in the petition Geauga Savings & Loan Association), the Farmers' Deposit and Savings Bank, the American Exchange National Bank, the Pittsburgh National Bank of Commerce, the First National Bank of Warren, O., and the Monongahela National Bank, for answer to the so-called petition of the Leadville Coal Company and Charles S. Worden, adopt all the exceptions, reservations, protests, and state-

ments of the answer thereto filed by the Lake Superior Iron
275 Company *et al.* for themselves and other creditors and the denials therein, and especially say that each of their respective claims were duly presented and heard by said master on evidence that said claims *when* found on commercial paper; that the same were duly presented for payment when and where due and payment demanded and refused, of which demand and refusal in each instance said corporation of Brown, Bonnell & Company had due notice, and that evidence thereof was adduced before said master.

They further say that said claim of Lorenzo Lane is and so found by the decree herein to be $6,917.15 instead of $5,917.15, as stated in said petition; that said claims of Wick Brothers & Co., Pratt & Co., and the Pennsylvania Co. were only in part against Brown, Bonnell & Co. as endorsers; that said claim of the National Bank of Fayette county, as found by said decree, is $52,922.06 instead of $77,424.95, as stated in said petition.

They say that all of said claims were duly filed, presented, and approved, were properly and duly heard by the master, included in his report and in the decree entered by this court in 1886, affirmed by the Supreme Court of the United States at its October term, 1889, and protest against said hearing being again opened or to being obliged again to commence litigation as to matters and things already so completely determined.

C. C. BALDWIN & C. D. HINE, *Solicitors.*

276 And afterwards, to wit, on September 22, 1890, a petition was filed in this cause, which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY
vs.
BROWN, BONNELL & COMPANY.

To the honorable judges of said court, in chancery sitting:

Your petitioner, Henry Crawford, respectfully shows:

1. That he is an attorney-at-law and resides at Chicago, Illinois.

2. In October, 1883, he was retained and employed by the corporation known as Brown, Bonnell & Company to take sole charge and supervision of its interests in this litigation, and also to secure, if the same could be done, some adjustment with the creditors and reorganization of the company which would prevent the forced sale of the property and sacrifice of its stock of $1,500,000, all of which has been fully paid up in cash.

3. This petitioner accepted the said retainer and employment and entered upon the performance of professional service in this cause and has for nearly seven years been the only solicitor representing such corporation. After a very careful examination of the question of jurisdiction involved in this case petitioner came to the opinion that very grave doubts existed as to the right of this court to enter-

tain this cause and appoint a receiver and distribute the assets and petitioner advised that the only judgment in existence when
277 the bill was filed should be paid off and an application be then made to discharge the receiver. As all the money and assets of the corporation were in the custody of this court, your petitioner, at the request of the said corporation, agreed to advance for its benefit the amount necessary to pay off the judgment of the Negaunee Concentrating Company, and accordingly, on November 24, 1883, your petitioner, for the use of said corporation, paid to the clerk of this court the sum of $5,458.86 in full of the principal and interest of the same judgment of the Negaunee Concentrating Company and costs of court.

4. Your petitioner shows that the interests involved in the litigation thus put into his charge were very large; that the questions involved were intricate and important, and he was compelled to and did devote a great deal of time in the examination of authorities, preparations for arguments and hearings, in drawing papers, and in attending before the court and master on the divers hearings, and afterwards in preparing and abstracting the record in the Supreme Court of the United States on appeal and the preparation of argument therein and printing the same.

Said petitioner was necessarily compelled to attend to nearly all of such service at Cleveland, and was therefore taken away from his residence and his other engagements, and was compelled to pay out and advance a large sum for expenses, copies of papers, stenographic work, certified transcript of record, and printing the same.

278 5. Your petitioner further shows that soon after his appearance in the cause the Commercial National Bank of Cleveland and others filed elaborate pleadings herein, claiming, in substance, that they had a first lien upon all the real estate and plant of the corporation by reason of a mortgage to Dan. P. Eells and John Hay, trustees, to secure a few creditors only of the corporation.

Your petitioner, without the participation or aid of any creditors but two or three, actively resisted the said claim of priority and drew the necessary pleadings to contest the validity of the mortgage thus set up. He also personally attended all the hearings before the master on the reference of such matter, and either examined or cross-examined all the many witnesses produced on such hearing; orally argued, and also briefs, the case before the master; examined his report sustaining the validity of such mortgage, which would have reduced nearly all the creditors to a second rank on the real estate; proposed exceptions thereto; prepared and made an oral argument on such exceptions, and procured a decree setting aside such master's report and cancelling such pretended mortgage as illegal and void, thereby entitling all creditors to share alike and without preference in the said real estate and plant.

6. Petitioner shows that he has never received any payment whatever on account of his said professional services, expenses, or dis-

bursements, as above stated, and he prays the court will make
279 proper allowance to him therefor and order the same to be paid as part of the expenses of administration.

HENRY CRAWFORD.

Sworn to and subscribed in my presence this 30th day of Sept., A. D. 1890.

MARTIN W. SANDERS,
U. S. Com'r, N. D. O.

280 And afterwards, to wit, on Oct. 1st, 1890, a decree confirming sale was entered in this cause, and which is in words and figures following, to wit:

THE LAKE SUPERIOR IRON COMPANY *et al.*
vs.
BROWN, BONNELL & CO. *et al.*
} Chancery, 4195.

WEDNESDAY, *October 1st*, 1890.

At this April term, A. D. 1890, of this court the above-entitled cause came on to be heard on the motion to strike from the docket the exceptions filed by the Leadville Coal Company and Charles S. Worden and the exceptions filed by George M. Ayer and Amy G. Ayer to the report of Wilbur F. Goodspeed, special master commissioner, which motion was overruled by the court.

Thereupon this cause came on further to be heard upon the exceptions filed by the Leadville Coal Company and Charles S. Worden to the report of Wilbur F. Goodspeed, special master commissioner, of the proceedings had and sale made by him under the decree of sale heretofore rendered in this cause; and said cause also came on to be heard upon the exceptions filed by George M. Ayer and Amy G. Ayer to the said report and sale and evidence adduced and was argued by counsel and submitted to the court. On consideration whereof the court find that said exceptions are not well taken and overrule the same, to which ruling and decree of the court the solicitor for said parties excepts.

And thereupon this cause came on further to be heard upon the motion of complainants to confirm the sale made by Wilbur F.
281 Goodspeed, special master commissioner, under the decree rendered in this cause at the February term for the year 1886 of this court and subsequently affirmed by the Supreme Court of the United States. The report of said special master commissioner of the proceedings had and the sale made by him under said decree was produced and submitted to the court, and all of the proceedings had by said master were carefully examined by the court; thereupon the court, being fully advised in the premises, find that said proceedings and sale have been had in all respects in conformity to law and the order of this court; and it is therefore ordered and decreed by the court that said proceedings and sale be, and the same are in all respects hereby, approved and confirmed, to which ruling and decree of the court said Leadville Coal Company, Charles S.

Worden, George M. Ayer, and Amy G. Ayer, by their solicitor, except.

And it being shown to the court that the purchasers at said sale, viz., William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, trustees, purchased the property so as aforesaid sold by said special master commissioner as trustees in behalf of creditors of Brown, Bonnell & Company, owning all the claims against said Brown, Bonnell & Company, as the same are stated in the decree of sale rendered herein by this court at its February term, A. D. 1886, with the exception of the claims found by said decree to exist in favor of the following-named persons, to wit:

Wilcox & Scaife.
Chess Stoner.
H. L. & E. A. Swartezenberg.
Phillips, Stewart & Co.
American Nail Machine Company.
282 Port Royal Coal & Coke Company.
Cartwright, McCurdy & Co.
Wick C. Gans.
Wheatland Bessemer Steel Co.
Kirk, Christy & Co.
Reid Bros.
Moravia Limestone Co.
McVay & Walker.
B. F. Goodrich Co.
Leadville Coal Co.
Joseph C. Brennerman.
Shenango Coal Co.
W. H. Rickey.
Lowell Limestone Co.
Martin Quigley.
A. Armstrong.
Park Bros. & Co.
Standard Oil Co.
Atwood & McCaffrey.
Edwin Bell & Sons.
Youngstown City Water Works.
E. W. Powers & Co.
Shenango Machine Co., Limited.

It is therefore ordered by the court that upon the delivery by said purchasing trustees to said special master of proper vouchers or receipts for the amounts of the dividends hereinafter ordered to be distributed upon the claims represented by them, and upon said purchasing trustees paying to said master, in addition to the
283 amount heretofore paid in by them on their bid, the sum of $7,861.24, the said Wilbur F. Goodspeed, as special master commissioner in this cause, execute and deliver unto said William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, trustees, a deed conveying to them in fee simple all and singular the lands, tenements, rights, and property of every description so as aforesaid sold to them by said special master commissioner.

And the court, coming now to the matter of the distribution of the proceeds of said sale, orders that there be paid thereupon, first, to Wilcox and Scaife the sum of three hundred and twenty dollars, being the amount of their preferred claim, as hereinbefore found, with interest; second, to all of the creditors of Brown, Bonnell & Co., as found and adjudged by the former decree of this court, except the Citizens' National Bank of Pittsburgh and the Pittsburgh and Lake Erie Railroad Company and Webb, Hart & Co., a dividend of .551% upon their several claims as fixed by said decree, which the court find is the distributive share of said fund going to said creditors.

And the court orders that there be paid to said Citizens' National Bank of Pittsburgh, to apply on its claim and as its distributable share of the portion of the proceeds of said sale hereby ordered to be distributed amongst creditors, the sum of $36,835.10, and that there be paid to said Pittsburgh & Lake Erie Railroad Company, to apply on its claim and as its distributable share of the portion of the proceeds of said sale hereby ordered to be distributed amongst creditors, the sum of $517.60, and the residue of the proceeds of said sale left after making the distributions as above ordered the said master is ordered to apply toward paying the costs of this case.

284 It is further ordered that before the receiver be required to deliver possession of said premises and property to said purchasers they shall execute and deliver to said receiver, Fayette Brown, a bond in the penal sum of twenty thousand dollars, with surety to be approved by the clerk of this court, conditioned to protest and save harmless the said receiver from any and all liability on any pending and unfinished contract or contracts made by the said receiver in the carrying on of his business as such receiver under the authority of this court.

And the said receiver, Fayette Brown, is hereby ordered to pay out of money in his hands as such receiver all the residue of the costs in this cause, to be taxed.

And the application made herein in behalf of the Leadville Coal Company and Charles S. Worden having been submitted to the court upon the petition filed by them herein on the 22nd day of September, 1890, and the answer filed thereto by the complainant and others and by the Greenville National Bank and others, the court find that the Leadville Coal Company and Charles S. Worden are not entitled to the relief prayed for by them in their petition filed by them herein on September 22nd, 1890, and overrules and dismisses his petition; to which finding and ruling of the court said Leadville Coal Company and Charles S. Worden, by their solicitor, except.

The court further finds that Henry Crawford is not entitled to the relief prayed for by him in his petition filed by him herein on September 22nd, 1890, and overrules and dismisses his petition;

285 to which ruling and order of the court said Henry Crawford excepts.

And it is ordered by the court that the special master commissioner shall not execute or deliver a deed to the purchasers

for property sold in this case until after the expiration of ten days from the entry of this decree.

From which decree the Leadville Coal Company, Charles S. Worden, George M. Ayer, and Amy G. Ayer pray an appeal to the next term of the Supreme Court of the United States, which appeal is allowed, and bond for the costs is fixed at the sum of $1,000.00. In case said bond is to act as a supersedeas, the same is fixed at the sum of $200,000.00.

286 And afterwards, to wit, on Oct. 11, 1890, an appeal bond was filed in this cause, which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio.

LAKE SUPERIOR IRON COMPANY
vs.
BROWN, BONNELL & COMPANY.

Know all men by these presents that the Leadville Coal Company, Charles S. Worden, George M. Ayer, and Amy G. Ayer, as principals, and Henry Crawford, of Chicago, Illinois, as surety, are held and firmly bound unto William McCreery, Henry Tod, C. C. Baldwin, and Cecil D. Hine, trustees, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States, to be paid to the said obligees and their successors and assigns for the benefit of whom it may concern; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, our heirs, executors, and administrators, firmly by these presents.

Signed and sealed this 10th day of October, 1890.

The condition of this obligation is that whereas, in the above-named cause, the said circuit court of the United States for the northern district of Ohio did, on October 1, 1890, enter a final decree and order confirming the sale of certain property to such obligees, and ordering a deed to be executed and delivered to such purchasers, and a distribution to be made of the purchase-money, as within and by the record of such decree will more fully and at

287 large appear and that whereas the said Leadville Coal Company, Charles S. Worden, George M. Ayer, and Amy G. Ayer have prayed an appeal to the Supreme Court of the United States from said final decree, which said appeal has been allowed by the court, as appears by the record of said decree: Now, if the above-bounden appellants shall prosecute their appeal to effect and answer all costs and damages if they shall fail to make their appeal effectual, then this obligation shall be void; otherwise to remain in full force and effect.

LEADVILLE COAL CO., [SEAL.]
By HENRY CRAWFORD, *Att'y-in-Fact.*
CHARLES S. WORDEN, [SEAL.]
By HENRY CRAWFORD, *Att'y-in-Fact.*
GEORGE M. AYER. [SEAL.]
AMY G. AYER, [SEAL.]
By HENRY CRAWFORD, *Att'y-in-Fact.*
HENRY CRAWFORD, *Surety.* [SEAL.]

UNITED STATES OF AMERICA,
Northern District of Illinois.

Henry Crawford on oath says he is a citizen of Chicago, Illinois; that he has subscribed the foregoing bond as surety, and that he is fairly worth the sum of five hundred thousand dollars over and above all his just debts and liabilities.

HENRY CRAWFORD.

Sworn to and subscribed before me this 10th day of October,
288 A. D. 1890.

H. W. BLODGETT,
U. S. Judge, Nor. Dist. Ill.

I have examined Mr. Crawford, the surety on the above bond, under oath, and from such examination am of opinion that he is worth over five hundred thousand dollars over all his liabilities.

H. W. BLODGETT, *Dist. Judge.*

Approved and filed Oct. 10th, 1890.

AUGUSTUS J. RICKS,
U. S. Dist. Judge.

289 THE UNITED STATES OF AMERICA,
Northern District of Ohio, } *ss:*

I, Martin W. Sanders, clerk of the circuit court of the United States within and for said district, do hereby certify the foregoing to be true copies of the original bill, order appointing receiver, inventory and schedule of property by receiver, supplemental bill, order for all creditors to file claims, order *pro confesso*, appointment of A. J. Ricks master, pleas of Brown, Bonnell & Company, answer and cross-bill Commercial National Bank *et al.* and exhibits thereto, appointment of Crawford, motion to discharge receiver, order overruling motion, response of divers creditors to petition Commercial National Bank, Exhibit A to same, with list of judgments in State court; master's report, with schedules; supplemental report of master, order approving master's report on claims, master's report on intervening petition Commercial National Bank, exceptions of Charles S. Worden to same, order sustaining exceptions to master's report, intervening petition Commercial National Bank, decree of sale, petition suggesting dissolution of Brown, Bonnell & Company, order of court thereon, report of Special Master Goodspeed, exceptions of Charles S. Worden and Leadville Coal Company to confirmation, exhibit to same, exceptions of George M. Ayer and Amy G. Ayer to confirmation, affidavit of Henry Crawford, record of common pleas court, Mahoning county, showing dissolution of corporation; motion
290 to strike exceptions from files, affidavits filed by creditors on such motion, creditors' motion for confirmation, opinion of court, petition of Leadville Coal Company and Charles S. Worden, transcript of judgment of Worden in Mahoning court of common pleas, answers creditors to such petition, petition of Craw-

ford, decree confirming sale, &c., appeal bond in the above-entitled cause in said court, and that the same are correctly copied from the originals now on file and on record in my office.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 25th day of October, A. D. 1890, and in the 115th year of the Independence of the United States of America.

Seal of the Circuit Court, Northern Dist. of Ohio.

MARTIN W. SANDERS, *Clerk.*

Endorsed on cover: N. Ohio C. C. U. S. No. 1543. The Leadville Coal Company, Charles S. Worden, George M. Ayer, & Amy G. Ayer, appellants, *vs.* William McCreery, Henry Tod, C. C. Baldwin, and Cecil D. Hine, trustees, *et al.* Filed November 3, 1890.

OCT 19
JAMES H. McKE
CL

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 1543.

LEADVILLE COAL COMPANY AND OTHERS, *Appellants*,
vs.
WILLIAM McCREERY, HENRY TOD AND OTHERS, *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANTS.

HENRY CRAWFORD,
SOLICITOR FOR APPELLANTS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 1543.

LEADVILLE COAL COMPANY AND OTHERS,
Appellants,
vs.
WILLIAM McCREERY, HENRY TOD AND OTHERS,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANTS.

This appeal is prosecuted from a decree confirming a sale of property and distributing the proceeds thereof, rendered in an action brought by creditors against a corporation called Brown, Bonnell & Co. On an appeal by that company from the decree ordering a sale of its property this court affirmed the action of the lower court, solely upon the ground that the corporation having acquiesed in the appointment of a receiver and the judicial administration of its property could not assign error on such proceedings.

134 U. S., 534.

In order to properly appreciate the exact nature of the controversy between the present litigants, it will be nec-

essary to briefly state the history of the case from its origin.

On February 20, 1883, three creditors filed a bill in equity against Brown, Bonnell & Co. Two held unmatured notes. The third had a judgment for $5,110.40 taken on the same day in the Circuit Court. No execution had ever been sued out thereon.

On behalf of complainants and all other creditors the bill averred that the corporation was organized under the laws of Ohio and was heavily engaged in the manufacfacture of iron; owned and operated blast furnaces, rolling-mills, coke-works and coal mines; that 4,000 operatives were then employed in its mills and works; that its plant, good-will and business were of great value; without giving any detail whatever, it was averred that vexatious litigation had been commenced against it, accompanied by attachments and seizures, which would give to the creditors pursuing them an unjust advantage "over your "complainants whose claims are not yet due;" would endanger the valuable property of defendant, destroy the value of its good-will as an asset and thereby cause great and irreparable injury to complainants and other creditors. It was alleged in general phrase that "the defendant was "insolvent," and if the court did not preserve the property and assets by the appointment of a receiver a large number of laborers would be discharged and thereby cause a cessation of the extensive going businesss of the defendant.

There was no description of any real estate nor allegation that any of the corporate property was within the territorial jurisdiction of the court. There was no allegation that the company had abandoned its property or ceased to do business or that its directors had committed

any unlawful or fraudulent acts or were intending to do so. There was no prayer for judgment on the claims of complainants or that the court should wind up the corporation, or sell its property or ascertain its creditors or settle its affairs.

The only particular relief prayed was that a receiver should be appointed "to take charge of the property and "assets of the corporation."

The corporation appeared to the bill on the day it was filed and without objection from it the court appointed a receiver to take possession of all the corporate assets with general direction to continue the operation of the plant in the manner in which it had been before been carried on by the company.

No specific description of any land or property was recited in such decretal order. Neither did it direct that any deed or assignment should be executed by the corporation so as to vest the legal title in the receiver thus appointed.

On March 28, 1883, a so-called supplemental bill was filed. In fact it exhibited no material supplemental matter whatever. It only enlarged the prayer for relief by asking that the court should determine all debts and priorities, that all creditors should be notified to present their claims to the receiver for allowance, and on final hearing a sale of all the defendants property by the receiver should be decreed and the proceeds held subject to further order.

The record shows no notice or leave to file such supplemental bill and no process thereon, or rule to plead thereto.

On April 22, 1883, an order was entered requiring

creditors to file their claims in the clerks office within sixty days. Notice was to be given of such order by publication and copy by mail to each known creditor. (Rec., 9.)

June 14, 1883, it was ordered that the original and supplemental bills be taken *pro confesso*.

July 7, 1883, a special master was appointed to audit and report on creditors claims and liens.

November 24, 1883, the corporation appeared, showing that it had paid the only judgment against it and asked for the discharge of the receiver. Its application was refused.

June 11, 1884, the special master reported allowances aggregating $1,320,649.92, to 176 creditors. With a single exception, they were creditors at large without lien, mortgage or judgment. The report and schedule show that over $500,000 of such allowances were based on the contingent liability of the corporation as endorser on the promissory notes of other parties maturing after the receivership.

February 23, 1886, a decree was entered confirming such allowances to creditors, adjudging that the corporation was insolvent when the bill was filed and the creditors had the right to have its property sold.

In default of payment of such allowances the corporate real estate, which for the first time was described, was ordered sold as upon a judgment at law, in one parcel and without division. (Rec., 80.)

As to the material, supplies and products manufactured or in process of manufacture, and money and credits, the decree provided that they should be held by the receiver to abide the further order of the court.

Pending the proceedings, Eells, Otis and certain others claimed to hold a mortgage lien on practically all the corporate property. On the defence interposed by the appellants, Worden and the Leadville Coal Co., the court held that the mortgage was constructively fraudulent, and rejected the claim of lien or priority. (Rec., 40, 66, 68.)

The mandate issued by this court on the affirmance of this decree was a general one.

After it went down and before any order of sale was issued on the decree, the Coal Company and Worden on May 31, 1890, filed a written application, alleging that they were judgment creditors of Brown, Bonnell & Co., and entitled to share in any distribution of its assets; that such corporation was created under the laws of Ohio, and by due proceedings instituted January 11, 1884, in the court of common pleas of Mahoning county, Ohio, such corporation had been judicially dissolved on July 12, 1889, and one Hallett K. Taylor had been appointed as receiver, and under the laws of Ohio, as such receiver, had become invested with all the estate and effects of such dissolved corporation, charged with the statutory duty of holding, managing and disposing of all such corporate assets and distributing them among the creditors

They prayed that such corporate dissolution should be noted, and the action be abated by reason thereof and that all corporate assets be delivered over to the receiver appointed in such dissolution proceedings for administration under the state law. (Rec., 85.)

The court on the same day entered an order entertaining the application and took the same under advisement. (Rec. 84.)

Without action thereon or revivor in any way, process was issued to the special master commissioner on June 3, 1890; the property was appraised at $962,137, and sold on July 22, 1890, to the appellees for $700,000. The report of sale was filed July 23d. (Rec. 84.)

The appellants filed exceptions to the report of sale supported by affidavit and the exhibited record of the judicial proceedings and decree of the State court dissolving the corporation and appointing a receiver with statutory powers. (Rec., 93 to 122.)

A motion was made to strike out these exceptions (Rec., 123), which was overruled. (Rec., 169.)

Two affidavits were filed to sustain the master's report of sale. (Rec., 124.

On September 5, 1890, the court delivered an opinion overruling the exceptions and confirming the sale. (Rec., 126.)

On September 22, 1890, the Leadville Coal Company and Worden filed their petition for relief in the proposed decree of distribution. (Rec., 132.)

It alleged that at the institution of the suit and ever since they were creditors of the dissolved corporation on promissory notes issued by it for value.

That on November 22, 1883, the Coal Company recovered judgment in the Mahoning Common Pleas Court for $11,974.45, and Worden recovered judgment for $17,383.77. Both of such judgments were in full force and unsatisfied. That they were entitled to share in any distribution of the assets of their debtor. They further claimed that twenty-three designated persons and corporations to whom decretal allowances had been made aggregating over $500,000 were not *bona fide* creditors

of the dissolved corporation or entitled to share in any distribution of its assets, but only held notes made by other parties bearing the endorsement of such corporation, and that such contingent liability had never been fixed by the due diligence required by the laws of Illinois regulating such paper, or by demand, protest and notice.

That such allowances were obtained before the master *ex parte*, without defense interposed by either the corporation or receiver there or before the court and without any evidence showing such diligence protest or notice.

In consequence of the dissolution of the corporation, petitioners claimed the right to challenge the allowances made on such endorsed paper.

Petitioners also claimed that their judgments were liens on the corporate real estate in Mahoning county. The relief prayed was in the alternative: that the allowances on such endorsed paper be reopened and rejected; that petititioners' judgments be allowed priority, according to the statutes of Ohio, or, if that be denied, then that their claims be ordered paid ratably with other creditors. (Rec., 134.)

The record of the suit in the State court resulting in the dissolution of the corporation, shows that the same was instituted January 11, 1884, by Eells, Otis, Harris and Hay and Mather, executors. all of whom appear on this record as creditors and interested in the purchase of the property by appellees. (Rec., 101, 107.)

The judgments of November 22, 1883, in favor of the two creditor appellants were proven up in the dissolution suit, and are embraced in the schedule of corporate liabilities, which the statutes of Ohio require the referee to report to the court. (Rec., 120.)

This report was confirmed July 12, 1889, by the Mahoning Common Pleas Court, and a final decree rendered dissolving the corporation, appointing Hallett K. Taylor receiver of its estate and effects, to " have all the powers " and perform all the duties which are prescribed by the " statute in such cases made and provided." (Rec., 107.)

On October 1, 1890, responses were filed to the petitions of the two creditor appellants by divers other creditors in the nature of a demurrer as well as a partial traverse. The judgments were not denied. It was charged that the Worden judgment was without consideration, and ought not to share in the assets, because it was stale. The response objected to opening up any allowances or including Worden's claim in any decree of distribution. (Rec., 164, 166):

On the same day, disposing summarily of appellant's petition on the legal questions arising on their face and denying any opportunity to prove the allegations, the court entered a final decree confirming the sale, ordering a conveyance to appellees, dismissing appellant's petitions, and distributed the proceeds of sale among the creditors, excluding appellant Worden from any participation therein. (Rec., 169.)

The present appeal was allowed from such decree. (Rec., 172.)

Errors Assigned.

1. Selling real estate on process issued after the death of the sole defendant.

2. Rendering a personal decree against a dissolved corporation without revivor against its statutory representative.

3. Refusing to recognize the paramount title and right of possession vested by statute in the receiver appointed in the dissolution decree.

4. Overruling the exceptions to the sale.

5. Confirming a sale which could pass no valid title.

6. Refusing to give any effect to the dissolution proceedings which were binding on all creditors and rendering a decree of general administration of the affairs of an extinct corporation which practically annuls a valid and paramount statute of Ohio.

7. Dismissing the petition of appellants.

8. Refusing to allow any challenge of divers allowances on endorsed paper.

9. Excluding the claim of Worden from any participation in the fund.

It is claimed that the action of the Circuit Court, reviewable under this appeal, was in precise execution of the mandate of this court and therefore cannot be again examined.

It is not denied that when this court, by its mandate, specifically directs the Circuit Court to enter a particular decree, it will not allow a second appeal from what is virtually its own decree.

Stewart v. *Salamon*, 97 U. S., 361.

This doctrine has no application here. This court did not direct any decree whatever to be entered, or in any way specify what action the Circuit Court should take by way of executing its own decree. By the affirmance the decree of the Circuit Court was not constituted the decree of this court.

The mandate was in the usual general form. Its interpretation is not open to controversy. "It simply "affirmed what had been done by the Circuit Court; it "gave no instructions as to what remained to be done, "except that it should be as right and justice and the "laws of the United States should require. *The Circuit* "*Court was left free to determine for itself what was thus* "*required.* If, upon further consideration, right and "justice should seem to require revocation of that "order, there was nothing in the mandate to prevent it "from so deciding."

Ex parte Sawyer, 21 Wall., 235,
Mackall v. *Richards*, 112 U. S., 369.
Barney v. *Railroad*, 117 U. S., 231.

All questions involving the regularity of the sale are properly reviewable upon a second appeal.

Taylor v. *Maguire*, 17 Wall., 253.
Supervisors v. *Kennicott*, 96 U. S.

It is entirely within the power of the lower court to deal with an affirmed decree and open, stay or revoke the same upon material new matter occurring after its rendition being properly brought on the record.

The decided cases clearly sustain the doctrine that any rulings of the Circuit Court upon the new controversies thus presented after the affirmance are not concluded by the first decree or mandate, but are the proper subjects of a distinct appeal and entitled to full hearing.

Every error assigned on the present record involves rulings made upon new matter transpiring subsequent to the decree which affects the jurisdiction of the court and the regularity of its procedure.

The objections to the sale, the right of appellant Worden to share in the fund, and the effect of the dissolution of the corporation under the state law, are not matters "de-"cided on the first appeal" or "settled by the terms of "the former mandate."

All these questions are here for the first time and arise between different litigants by reason of subsequent matter. The affirmance of the original decree in no way precludes the appellants from presenting their contention upon its merits.

First. It was error to issue process, sell real estate and render an adversary decree after the death of the corporation and without proper revivor.

The corporation was sole defendant. The receiver appointed by the Circuit Court was a mere hand of the court to hold possession of the plant and continue the business in the corporate name. He held no title. The complaining creditors asserted no lien or priority.

So far as this record shows, the corporation was, when

its extinction was suggested, the holder of the legal title to all the described property free from any contract or statutory lien, but held in general sequestration with an unexecuted order to sell the same as upon a judgment at law.

With respect to the corporate assets other than the realty ordered sold, the cause was necessary *in fieri*. To dispose of and distribute a personalty fund of over $700,000 (Rec., 132), would require divers other decrees of sale, confirmation and dividend to be entered, operating *in personam* as in an ordinary adversary proceeding.

With a cause pending under such conditions, the appellants proved that since the decree, the corporation had become extinct by reason of a judicial sentence in a competent court and all its assets had become vested in a receiver who was an express statutory trustee for all creditors.

The Circuit Court wholly disregarded these facts, and without revivor, issued process, sold and conveyed property and entered adversary decrees against an extinct corporation.

Later on it will be claimed that the necessary result of the decree executing the state insolvent system, was to supersede the federal sequestration and decree.

If, however, the Circuit Court retained jurisdiction to sell property and render further decrees in this cause, notwithstanding the State law and the coporate extinction, its action should be reversed unless it was in accordance with law and established equity practice.

The procedure to be observed in case of the death of a defendant is settled by precedent, standing rules and statutes.

Abatement in equity, by reason of the death of a party

to the record, means only a temporary suspension and not a full determination of the suit.

Equity rule No. 56, appoints the practice when the suit thus becomes defective.

Until the proper respresentative of the deceased party is brought by name upon the record and personally subjected to the jurisdiction of the court by appearance or process, no execution can be issued and no further decrees can be rendered.

Story Eq. Pl., 369.
Danl. Ch. Pl., 1,714.
Green v. *Watkins*, 6 Wheat., 263.
Clark v. *Mathewson*, 12 Peters, 164.

Adversary judicial proceedings cannot be maintained without any defendant on the record. There is a total lack of jurisdiction until the living representative of the dead defendant is brought into the cause.

No execution can lawfully issue after the death of a defendant, and before revivor and a sale under such process is void, and passes no title.

Erwin v. *Dundas*, 4 How., 56.
Ransom v. *Williams*, 2 Wall., 313.
Yonley v. *Lavender*, 21 Wall., 276.

These rulings apply with equal force to the death of corporations occurring *pendente lite.*

Greeley v. *Smith*, 3 Story, 658,

As this court expressed it,

"It was a defunct institution and judgment could no "more be rendered against it in a suit previously com- "menced than judgment could be rendered against a dead "man dying *pendente lite.*"

Bank v. *Colby* 21 Wall., 611.
Bacon v. *Robertson*, 18 How., 486.
Mumma v. *Potom. Co.*, 8 Peters., 286.

After the court was informed of the corporate death and the name of the statutory receiver, it was an irregular and void proceeding to sell property and render a decree without bringing into court, the statutory successor who held the title to all the property of the defunct corporation.

Greenleaf v. *Owen*, 1 Peters., 138.
Hemdon v. *Howard*, 9 Wall., 664.

Such is the statute law of Ohio with reference to the revivor of actions. (R. S. Secs. 5,148, *et seq.*) It requires in imperative terms that upon the death being suggested, the successor in interest shall be named by supplemental pleading and order, and shall be served with process.

The Supreme court of that state hold that these provisions only declare the general rule of practice on the subject.

Carter v. *Jennings*, 24 Ohio S., 182.

In the opinion of the Circuit court, this case was not subject to the foregoing practice and decisions by reason of Secs. 5,679, *et seq*, regulating the abatement and revivor of actions wherein corporations were parties.

These provisions are expressed in usual form, and are in no way different from the sections regulating the revivor of suits on the death of natural persons.

They will not bear the interpretation that pending cases can proceed against dead corporations without proper revivor.

They allow pending actions to be saved from abatement by a prosecution or defense by the statutory trustee, receiver, or assignee of the dissolved corporation.

Sec. 5,675 expressly authorizes the trustees to become parties to pending causes.

Those provisions of the Ohio statutes regulating the revivor of actions in case of corporate death are to be construed in harmony with the general statutes on that subject, which require the living successor to be brought in Sec. 5,149.

Under similar provisions, the Court of Appeals of New York ruled that the statute declaring that an action shall not abate by reason of the death of a party, does not authorize the court to proceed against the dead defendant, but requires that the successor in interest shall be regularly named and brought into court. For non-compliance with such requirement a judgment against a dissolved corporation was held to be a nullity.

McCulloch v. *Norwood*, 58 N. Y., 562.

The Supreme Court of Ohio has construed these sections, and its interpretation is conclusive.

It refused to entertain jurisdiction of a writ of error sued out against a dissolved corporation, because the successor trustees were not made parties to the record or served with process.

The opinion says:

"In order to give us jurisdiction to determine the ques-
"tions arising upon the assignment of errors it becomes
"necessary to bring before the court as a party the
"trustees or other persons named in the statutes having
"the legal charge of the assets of the dissolved corpora-

"tion. A writ, directed to a defunct corporation, is a "nullity. Notice upon a party having no existence is "also null, and a judgment against such a party would "be of no effect."

Renick v. *Bank*, 13 Ohio, 298.
Miami Co. v. *Gano*, *ibid*, 209.

It would be at war with every known legal principle to construe the Ohio statutes as authorizing judicial action without any defendant before the court.

Knox v. *Bank*, 12 Wall, 382.

The decree of confirmation and distribution was obtained against a defunct corporation, and not against the receiver vested with the corporate assets. The writ issued was process directing the sale of land belonging to a dissolved corporation, all of whose property had become vested in a statutory officer.

Nothing in the Ohio laws warrant such a decree, or sale, or changes the common law rule that such judicial action is a nullity.

No cases were cited to sustain the validity of an adversary decree against a dissolved corporation. Two decisions were relied on to sustain the validity of the execution and sale. They are found in *Taylor* v. *Miller*, 13 How., 287, and *Bigelow* v. *Renker*, 25 Ohio S., 542.

In both these authorities there had been personal judgments, executions and levies on property in the life of the defendants.

The only point ruled was that a *vendi* issued after death took effect by relation to the levy during life, and that no revivor was necessary, as the representative took the estate subject to a perfected lien and an execution already in operation.

The case at bar has no features in common with these decisions.

The sums found due to creditors by the decree of February; 1886, were not judgments. They were not based on any such process as would give the court jurisdiction to render a personal money judgment. They did not merge the original causes of action. Nor could they have been the foundation for a subsequent suit against the corporation. They were allowances.

Norton v. *Switzer*, 93 U. S., 355.

When the corporation became extinct no lien had been perfected against its property. The suit was not brought to enforce any mortgage or other lien by contract or statute. No lien was created on unincumbered legal assets by the mere filing of the bill. It would be a repudiation of every authority to hold that a chancery receivership, which alters no right, created any lien. Chancery decrees rendered by Circuit Courts of the United States, have only such liens on land as are given by the law of the state wherein the land is situate.

It stands in express judgment that a decree finding allowances does not carry a lien upon lands under the laws of Ohio.

Hamilton v. *Jefferson*, 13 Ohio, 427.
Meyers v. *Hewitt*, 16 Ohio, 449.

The order of the decree was not that a lien should be enforced, but that the sale of property should be "as "upon a judgment at law."

Prior to the corporate dissolution there had been no execution issued or levy made.

Nothing can be clearer, therefore, than that the re-

ceiver, under the dissolution decree, became vested with statutory title to all its property before any lien had been perfected or execution been put in operation.

The existence of a possessory equity receivership could neither destroy such statutory title or enlarge the jurisdiction of the Federal court, or validate process issued and sale made after the corporate death.

This principle is settled by decisions of this court. In *Mitchell* v. *St. Maxent*, 4 Wall, 237, a sale of property on process issued after the death of the defendant was held to be void, notwithstanding the property so sold had been seized before death, and was held under process of attachment in aid of the suit.

In *Bank* v. *Colby*, 21 Wall, 611, a seizure of property under a writ of attachment did not change the rule that the dissolution of a National bank abated the process and suit.

Nothing in the Ohio law saves pending receiverships or restricts the statutory officers' title or powers when any portion of the assets may be in judicial custody.

Even if this suit was of such a character as did not wholly abate on the corporate dissolution, certainly the sale of its property and the rendition of the decree against an extinct corporation cannot be sustained. Without repleader and process against its successor, the court had lost alljurisdiction to proceed.

Second. The exceptions to the Master's report of sale should have been sustained.

Without elaborating the objections to the decreed confirmation they can be stated as follows:

(1.) Inadequacy of price. The accepted bid was $700,000. The purchasers were parties and of course

bound by all irregularities. Bearing directly on the subject of values, the following facts appear in the record.

The corporation had a share capital of $1,500,000, *fully paid up*. (Rec., 111, 118.)

The first two parcels included in the sale being the main plant, rolling stock, etc., and the Mahoning Coal Company, are appraised by the court's own officer at $1,639,000. (Rec., 5, 6.)

It also appears that pending the action there had been gathered into the court's registry net profits of over $700,000. (Rec., 132.) It is in accord with experience that a receivership is not as likely to be as large a profit-producer as good business management otherwise. The court's own figures on a basis of five per cent. yearly income, would establish a valuation of about $2,000,000.

These figures ought to carry as much weight on the question of adequacy of price as the mere opinions of persons as to the value of such property. Actual business results produced under disadvantage ought to be as safe a criterion as the conclusions of an expert reached on brief inspection.

According to the test afforded by the court, a portion of the creditors are to get this valuable plant as a going concern with all its good-will and established trade and contracts for one-third of its real value, as shown by its actual income.

While the English practice of opening biddings has not been followed by our courts, if added to the objection of inadequacy, there are irregularities or only slight circumstances of unfairness, the sale will not be confirmed.

Elements of irregularity and unfairness were presented.

(2.) The Ohio laws, Sec. 5,389, as an absolute prerequisite of a valid sale of real estate, requires that it shall be appraised by three disinterested freeholders.

It is the settled law of that state that this requirement is mandatory and enforces a state policy recognized for many years.

Wiles v. *Baylor*, 1 Ohio, 232.
Anonymous, *ibid.*, 106.

The court of chancery has no power to sell the legal title in any other manner, and sales not in conformity with such law are irregular, and as against persons with notice pass no title.

Cassidy v. *Rhodes*, 12 Ohio, 88.
Daniels v. *McBain*, 2 Ohio St., 408.
Houts v. *Showalter*, 10 *ibid.*, 126.
Trust Co. v. *Goodin*, *ibid.*, 357.

This enforces the general doctrine that where express statutory requirements, designed to protect the debtor, are not followed, the sale will not on direct challenge be confirmed. Non-compliance impairs the anthority to sell.

Rhonevans v. *Cornin*, 9 Ohio S., 366.
Moncun v. *Zunts*, 11 Wall., 416.

The Ohio law requiring appraisment was therefore a rule of property, the due observance of which was binding on the Federal courts.

Brine v. *Ins. Co.*, 96 U. S., 627.
Mason v. *id.*, 106 *ibid.*, 163.

This court has in two cases voided sales for non-compliance with such statutes.

Gauntly v. *Ewing*, 3 How., 707.
Smith v. *Cockrill*, 6 Wall., 756.

It is admitted that one of the appraisers is a cousin of several of the creditors interested in the purchase. The affidavits in support of the sale as to appraiser Neilson are based on the technicality that the employers, "Andrews Brothers," in which creditor Chauncey H. Andrews is interested, is a corporation and not a partnership.

The jury-law of Ohio very broadly declares all persons incompetent who are akin to either party, or stand in the relation of employer or employe. (Sec., 5,176.)

The analogy based on other statutory disqualifications has been enforced to determine who are competent appraisers.

Fox v. *Hills*, 1 Conn., 295.

Attachments, levies and sales have been held void because of incompetent appraisers in many cases.

The brother of a creditor is incompetent.

McGough v. *Wellington*, 6 Allen, 505.

A son-in-law.

Wilcott v. *Ely*, 2 Allen, 338.

A nephew.

Fox v. *Hills*, 1 Conn., 295.

(3.) The decree required the whole property as one parcel to be appraised as on a judgment. This must be on actual view to be legal. The affidavit supporting this objection is not traversed.

It is said that the presumption attending the appraiser's return cannot be overcome by affidavit. Evidently it is the only method capable of use and the practice is expressly sanctioned.

Savery v. *Sypher*, 6 Wall., 157.

(4.) The sale ordered by the decree was not only of the mere property, but as appurtenant thereto the executory contracts of the receiver in carrying on the business. It is not denied but that the receiver had advanced about $100,000 for which ore and supplies were thereafter deliverable to the works. Unless the plain words of the decree are to be ignored, the benefit of that contract passed under the sale. It is in effect admitted that the appraisal made no account of such advances, nor indeed of any executory contracts which manifestly would add materially to the value.

The plant was appraised and sold as an idle piece of property, instead of valuing it as a going property, with pending contracts for output and large advances made for undelivered supplies as the decree required.

All the parties interested, whether as shareholders or creditors, had both the statutory and decretal right to the benefit of the added value resulting from the appurtenant contracts.

(5.) The sale was irregular because Ralph J. Wick, the holder of the legal title to part of the property ordered sold, was not made a party. (Rec., 79.)

Ordinarily it would scarcely be denied that the court would have no power to sell or order a conveyance when the holder of the legal title was not before the court. The policy of the law is against vending defective titles. It will refuse to force bidders to perform such purchases.

O'Hara v. *McConnell*, 93 U. S., 150.
Bible Soc. v. *Price*, 110 U. S., 61.

The objection that the point should have been made earlier is not sound.

If the court at any time discovers that parties essential to complete decree and good title are not on the record, it will at any stage suspend proceedings and order them to be brought in by proper pleadings.

"Before the court ordered a sale it should have cleared "up all ambiguities."

Minn. Co. v. *St. Paul Co.*, 2 Wall., 640.

(6.) The exceptions show this purchase was for account of a combination between certain creditors and stockholders. In Ohio, the laws establish a personal liability of stockholders to an amount equal to their stock. A prominent feature of the trust agreement under which the bid was made is that the new company to acquire the assets of the dissolved Brown, Bonnell & Co., shall do two things: (1) Hold corporate claims it may acquire without prejudice to a resort to the individual liability of all stockholders except certain Cleveland stockholders; (2) these the new company is to indemnify against such stockholders' liability. (Rec., 95–99.)

This is making use of corporate assets to benefit stockholders to the prejudice of creditors.

Railroad v. *Howard*, 7 Wall., 392.

By means of this device, the Cleveland stockholders, by an agreement in advance of sale, and for the purpose of expediting such sale, have, as it were, specifically appropriated the corporate assets to relieve them from any individual liability, leaving all other stockholders to make good their individual liabilities out of their own property. (Rec., 98.)

Not only that, but by article 5, they contribute a fund to buy up claims against the corporation at half their face value for the declared purpose under article 7, of enforc-

ing the individual liability of their co-stockholders for par.

Such a compact in effect accomplishes a fraud on creditors, and is plainly a device to manipulate the corporate assets, so that some of the stockholders shall escape any personal liability, but enforce par liability against their co-stockholders on claims bought at a discount of fifty per cent.

The stockholders who have thus contracted for special indemnity for themselves out of the corporate assets are the same persons who, as petitioners procured the dissolution of tbe corporation. It is evident the confirmation of sale will secure to these parties an advantage and priority out of the common fund to the injury of their co-stockholders.

The purchase is subject to a secret trust that the corporate property brought under such pre-arrangement shall always stand as indemnity for the individual liability of a part of the stockholders. This is contrary to the equitable obligations which the equal sharers in a common fund owe to each other.

Coe v. *Pennock*, 23 Wall., 117.
Jackson v. *Ludeling*, 21 Wall., 616.

Especially a court of equity should refuse its aid to consummate such a bargain when the sale is marked with irregularities and is for a price only about one-third of the actual income producing value of the common estate as shown by the court records.

Third. On general principles the sale could not pass a valid title and therefore should not have been confirmed.

As before stated this action was not brought to enforce any contract or statutory lien. The filing of the bill did

not create any lien upon unincumbered realty the unclouded legal title of which was in the corporation. The discretionary appointment or discharge of a chancery receiver neither originates or displaces any lien. Clearly therefore when the dissolution proceedings were instituted in January, 1884, no lien on the land had been perfected by the bringing of this suit or the sequestration which had been ordered.

The creation, regulation and enforcement of liens upon the legal estate in lands is a subject exclusively within the province of state legislation.

The judgments, decrees and judicial proceedings of Federal courts become liens upon and specifically bind lands solely by virtue of the laws of the several states enforced as rules of property.

Brine v. *Ins. Co.*, 96 U. S., 627.
Smith v. *Cockrill.* 6 Wall., 756.

The existence, validity and extent of such judicial liens are purely matters of statute and chancery cannot either create or enlarge them.

Douglas v. *Hudson*, 6 Ohio, 156.

Similar to all laws regulating proceedings in bankruptcy or insolvency, the Ohio Statutes, Sec. 5,661, enact that the ultimate decree of corporate dissolution takes effect by relation to the day the petition was filed. The title to all the assets vests by mere force of law as of that date in the statutory receiver and annuls "all sales, assign-"ments, transfers, mortgages and conveyances of any "part of the estate, real or personal, including things "in action of every description made after the petition "for the dissolution of the corporation is filed" no matter upon what consideration, and also declares that "all judg-

" ments confessed by such corporation *after that time* shall " be absolutely void as against the receiver appointed on " such petition and as against the creditors of the corpora- " tion." The statutes requires an inventory of the corporate assets and liens thereon at the date of petition. Sec. 5,652.

The uniform doctrine is that an assignee or statutory receiver takes the estate of the bankrupt or insolvent as it existed when the proceedings were instituted and free of all liens subsequently acquired.

Colt v. *Brown*, 12 Gray, 233.

The Ohio law expressly concluded all creditors of the corporation by the dissolution decree.

In *Bank* v. *Sherman*, 101 U. S., 406, the principle was thus stated:

" The filing of the petition was *caveat* to all the world. " It was in effect a *caveat* and an injunction. Thereafter " all the property rights of the debtor were *ipso facto* " in abeyance until the final adjudication. Those who " dealt with his property in the interval between the fil- " ing of the petition and the final adjudication did so at " their peril."

No one could therefore acquire any lien, preference or right which the decree would not displace.

Thames v. *Miller*, 2 Woods, 564.
Chapman v. *Brewer*, 114 U. S. 158.

The legal result of the statutory proceedings in the state court was that the title of Taylor, receiver of the dissolved corporation, took effect as of the date of January 11, 1884, subject only to such valid and specific liens by judgment, statute or contract as had been fully perfected before that date.

The sale decree in this cause was taken February 23, 1886, with full notice of the pending dissolution action. It was not a personal money judgment, and, therefore, under the laws of Ohio did not *per se* create any statutory lien on real estate even if there had been no dissolution.

Terry v. *Anderson*, 95 U. S. 635.
Hamilton v. *Jefferson*, 13 Ohio, 427.
Myers v. *Hewitt*, 16 Ohio, 449.

The decree taken, pending the dissolution proceedings, ordered the sale ot the corporate real estate not to foreclose a lien but " as upon a judgment at law."

All creditors were bound to take notice that the corporation held a defeasible title when the decree was entered.

Before process issued to execute this *quasi* judgment at law the corporate title had become extinguished by judicial decree conclusive on all creditors, and the real estate had become vested in a statutory trustee coming in under a paramount title.

This condition of the title was properly brought to the attention of the Circuit court.

By the general rule, as well as under the local law of Ohio, an execution sale passes nothing but the title of the debtor as it existed at the time the property sold became specifically liable to satisfy the judgment and the purchaser takes subject to all outstanding equities.

R. S. Ohio, Sec. 5,402.
Osterman v. *Baldwin*, 6 Wall., 116.

The selling officer is treated as the agent of the judgment defendant and his conveyance is in legal contemplation only the quitclaim deed of the debtor. The Supreme court of Ohio decides:

"The officer cannot transfer a better estate or more "perfect title than the judgment debtor himself could "have made to his creditor on the day the judgment un- "der which the sale was made was entered against him."

Riddle v. *Bryan*, 5 Ohio, 48.
McLouth v. *Rathbone*, 19 Ohio, 21.
Corwin v. *Beesham*, 2 Ohio S., 36.

By the retroactive effect of the dissolution decree, the title of the corporation to all its property became extinct as of the date of January 11, 1884. The subsequent decree of February, 1886, and the process of execution thereon could not, under this statute and according to the universal doctrine, have any valid effect in passing title to the corporate property.

The decree was taken with full notice that the corporation title was defeasible. When the execution issued, its ownership had been actually overreached and the legal situation was precisely what it would have been had the dissolution decree been actually passed and entered of record on January 11, 1884, and the appellees rights are to be ascertained according to that test.

All the authorities agree in holding that under such circumstances no valid sale can take place under the judgment subsequently taken, for the same reason that prohibits an execution levy and sale after death.

"If the defendant die after execution sued out and "before levy made, the execution cannot proceed. The "reason is, the sheriff is commanded to take the prop- "erty of the defendant, but by his death this becomes "impossible. His right of property is terminated and "other rights have commenced."

Arnold v. *Fuller*, 1 Ohio, 458.

The precise question arose in *Bank of Tennessee* v. *Horn*, 17 How., 157, where an attempt was made to sell an insolvent's property after it had become vested in a syndic under the laws of Louisiana. It was then ruled that creditors could not question the validity of the insolvency proceedings or the title acquired thereunder. That the judgment purchaser under such sale obtained no title, because at the time when it was taken the insolvent debtor had no title or interest upon which the judgment could operate.

In *Buchanan* v. *Smith*, 16 Wall., 277, the clause of the bankrupt law overreaching attachments levied within four months prior to the filing of the petition was enforced. The judgment and a receivership in the attachment proceedings were decreed to be superseded by the subsequent adjudication of bankruptcy, and it was declared that the assignee took the same title to the estate as if the judgment did not exist.

In *Connor* v. *Long*, 104 U. S., 230, where a similar controversy was presented, this court said:

"The title of the bankrupt in the interval (between "petition filed and adjudication) is defeasible, and when "the assignment is made is divested as of the date when "the petition was filed. All titles derived under or "through him originating subsequently to that date are, "by force of law and without regard to the knowledge or "the motive of the claimant, overreached and defeated."

When the Circuit Court issued its process to sell this realty as the property of the corporation it was in face of the proven fact that by a judicial decree binding on every creditor it had been adjudged that the corporation had no title from and after a date long prior to the federal decree.

It was therefore erroneous for the court to undertake to sell an estate as the property of a former corporate defendant when the title thereto had passed to an officer charged with the execution of a paramount state law.

Fourth. The Circuit Court erred in refusing to recognize the right of the receiver, under the dissolution proceedings, to the possession of the property.

It is a proposition beyond dispute that the appointment of an ordinary chancery reviewer alters no right and creates no lien. He takes no special property in the property like a levying officer. He is a mere custodian. He is appointed to hold until he comes who has right. While the court thus in possession will under no circumstances allow its custody to be interfered with by the process *mesne* or final of any other tribunal, it is an elementary principle that any dominant title or lien can apply to the court which holds the property in its possession, and such paramount right will accordingly be recognized and enforced by the discharge of the receiver or otherwise.

Russell v. *East Ang. Ry.*, 3 McN. & G., 104.

Freeman v. *Home*, 24 How., 450.

Krippendorf v. *Hyde*, 110 U. S.

It was the plain, statutory, vested and judicially ascertained right of the appellants as creditors and shareholders of the dissolved corporation to have the state law made effectual through the title, possession and administration of the receiver, appointed to execute the statute. His paramount title and right of possession should have been respected.

The creditors who resisted any recognition of his right were by law parties to the dissolution decree and thereby

concluded as to the status of the corporate property and the receiver's statutory rights.

They were precluded by the record from disputing his paramount rights. They had no longer any equity to insist that the Federal receivership should be continued as against a statutory official constituted by the state law their own express trustee, and vested for their use with absolute title and right of custody.

The settled doctrine is that such decree being considered a decree for and binding upon all creditors, the court can enjoin any of such creditors from prosecuting elsewhere or interferring with the rightful administration of the estate under the statute.

Att. Gen. v. *Ins. Co.*, 77 N. Y., 277.
Richmond v. *Irons*, 121 U. S., 44.

The paramount nature and results of such statutory proceedings have been uniformly recognized and enforced both by common law and equity courts.

Daniels in his Chancery Practice, 1 Vol. 837, 839, says:

If a debtor be adjudged bankrupt after execution and levy, but the assignee takes title by relation to some earlier act of bankruptcy the property taken in execution must be held to be the property of the trustee.

In *Buchanan* v. *Smith*, 16 Wall., 277, a judgment and receivership based on an attachment levied before the bankruptcy petition was filed, were nevertheless, under the retroactive section of the law, decreed to be superseded and avoided, and the assignee's title paramount thereto.

To like effect is

Shawhan v. *Wheritt*, 7 How., 627.

The English cases are to the same effect.

Levy v. *Lovell*, 14 Ch. Div., 234.

Ex parte Schulte L. R., 9 Ch., 409.

In *Exparte* Sulger 17 Ch. Div. 839, the act of bankruptcy was committed March 9. On March 10, a creditor made levy on execution. Thereafter a petition in bankruptcy was filed followed by an adjudication.

The opinion holds: "With regard to the doctrine "of relation back, I feel myself bound to hold that on "the 9th of March which was the date of the act of bank-"rupty, the goods which the sheriff seized had ceased to "be the property of bankrupt and had become the prop-"erty of the trustee."

Apart from all consideration of the peculiarly paramount character of state laws regulating the dissolution of its own corporations, the general principles governing the overreaching title of assignees under involent laws required the Circuit court to surrender its possession of assets which belonged to a state officer free from any lien acquired by the proceedings in this cause.

With reference to the special errors assigned upon the rejection of the creditors petition, appellants claim.

Fifth. The creditor appellants had the right to challenge the allowances based on the endorsements of the corporation.

If the proceedings in this cause are to be dealt with according to the rules regulating creditor's suits, the practice is well established that the court has plenary power so long as the fund is undistributed, to open the provisional allowance to any creditor and to reject any claim which the new proof shows is not lawfully entitled to share.

"With respect to the form of a decree in a creditor's "suit, the court does not treat the decree as conclusive "of the debt. It is clear that it it is not so treated for all "purposes, for any other creditor may challenge the "debt, and it is equally clear that in practice the execu- "tor himself is allowed to impeach it."

Whitaker v. *Wright*, 2 Hare, 310.

Approved in

Galveston R. R. v. *Cowdrey*, 11 Wall., 479.

"The authorities abundantly sustain the proposition "also that a creditor who comes in under and takes the "benefit of a decree is entitled to contest the validity of "the claim of any other creditor except that of the "plaintiff whose claim is the foundation of the decree."

2 Danl. Ch Pr., 1240.

Richmond v. *Irons*, 121 U. S., 53.

No complaint is made that the application to re-open the allowance is not in proper form and would not under ordinary circumstances require the court to send the parties to the master's office on that issue.

With the assets all in hand and the distributive shares of creditors yet unsettled by decree, the Circuit Court held the petition insufficient in law even if true, refused to hear proof and dismissed it absolutely.

This ruling was based upon the view that the application was an attempt to relitigate matters determined by the former decree and mandate. (Appellee's brief, page 20.)

The findings of the sums due creditors included in the decree of February 23, 1886, are not as between the creditors and the corporation, or as concerns the creditors *inter sese*, final decrees.

They are mere allowances, and possess none of the qualities of a money judgment or decree *in personam*. No suit could be maintained thereon. They do not merge the debts.

Terry v. *Anderson*, 95 U. S., 635.
Norton v. *Switzer*, 93 U. S., 355.

As mere allowances they are only provisional and interlocutory. On good cause shown they are subject to re-examination, modification or rejection.

Railroad v. *Cowdrey*, 11 Wall., 479.
Railroad Co. v. *Borg*, 117 U. S., 434.

Nor was the Circuit Court in any way barred from entertaining the challenge of such allowed claims by reason of the former appeal. The former decree was final only as between the creditors as a class and the debtor corporation which appealed. The affirmance settled nothing as affecting the rights of the several claimants as between themselves.

On that subject the only decreee which could in any sense be final, was the one now appealed from, fixing and ordering the payment of the distributive shares. Up to its rendition the jurisdiction of the Circuit Court to adjudge what creditors were entitled to share as well as the amount and priority of each claim was absolute.

It was therefore erroneous in advance of the final decree of distribution to refuse to entertain an offer made in proper form to prove that a large number of claims were not in fact entitled to share in such final decree.

Sixth. The Circuit Court erred in refusing relief to the coal company and Worden as to their own claims.

The record and brief in support of affirmance fully

show that the absolute dismissal of the petition was because they were held insufficient in law on their face and not because the facts stated were unproven. The court below refused to allow the issue thereby tendered to be heard on proof.

These applications, besides challenging other claims, asked the court to order the judgments of the petitioners rendered by the State courts to be paid in full, or if that was refused, then *pro rata* with general creditors.

As to the Coal Company, the court refused to award priority to its judgment and refused to allow Worden to share at all in the distribution.

Even if no priority existed the action of the Circuit Court in refusing any relief to Worden was plainly in disregard of the precedents and well established practice.

His petition averred that he was at the commencement of the suit and ever since had been a creditor on promissory notes issued for value by the defendant corporation. That on November 22, 1883, he had recovered judgment on such notes for $17,383.77, which was in full force and a certified copy of the recovery was exhibited with the petition. (Rec., 132.)

Discarding the allegation about the judgment, the petition stated a case plainly entitling the applicant to the allowance against the fund of his original cause of action.

His petition being filed against an undistributed fund in the court's jurisdiction in advance of any decree finally establishing and ordering the payment of the distributive shares of creditors, was, according to the general doctrine heretofore cited, in apt time.

The only theory of such a suit for distribution must

necessarily be that it is a suit for all creditors without distinction and the decree is for the entire class and any creditor has the absolute right to come in at any time prior to final distribution.

Att. Gen. v. *Life Ins. Co.*, 77 N. Y., 277.
Griffith v. *Mangam*, 73 N. Y., 611.
Thompson v. *Brown*, 4 Johns. Ch., 642.
Wilson v. *Keeler*, 3 Paige, 164.

If he proves a valid claim against the corporation "then he does prove himself to be a creditor, and as such "is entitled to come in under the decree."

Richmond v. *Irons*, 121 U. S., 44.

The objection is again advanced that this is an attempt to relitigate matters barred by the former appeal. The original decree did not attempt to shut out any creditors. It did not adjudge that the particular creditors whose provisional allowances were recited in the findings of the court were *all* that should be admitted to distribution, or that none others should come in. It did not fix their dividends or relative rights on the fund. An affirmance of such a decree by this court is therefore no more a bar to the usual continuing power of the lower court over a fund in its registry than if there never had been an appeal.

There is no restriction whatever for the court to entertain and allow claims, so long as the final dividend decree has not been entered and the fund is still under its control. This is not only the logical result of the general principles applicable to such causes, but rests on express decision.

"In such a case it is well settled that a creditor upon "a proper case made by petition may be permitted to

"come in and prove his debt at any time while the fund "or any part thereof is under the control of the court, "notwithstanding the time limited by the master for the "creditors to come in and prove their debts had expired. "The neglect or omission of one will not preclude his "right to be afterwards let in provided the other credi- "tors are placed in no worse condition than if all had "come in at the same time."

Att. Gen. v. *Sec. Life Ins. Co.*, 34 N. Y., 271.
Brooks v. *Gibbons*, 4 Paige, 374.
Pratt v. *Bathbone*, 7 Paige, 296.
Warner v. *Hoffman*, 4 Edw. Ch., 393.
In re City Bank, 10 Paige, 370.
1 Newl. Pr., 534.

The judgment roll exhibited in support of the petition was, absolutely conclusive of the status of petitioners as creditors of the corporation and their consequent right to share in dividends.

Stephens v. *Fox*, 82 N. Y., 313.
Burgess v. *Seligman*, 107 U. S., 20.
Hawkins v. *Glenn*, 131 U. S.e 329.
Norton v. *Switzer*, 93 U. S., 355.

The allegation in the answer that the recovery was without consideration was insufficient in law and there was no attempt to sustain it by proof. A debt of record cannot be extinguished in that way.

The answers to the petition (Rec., 166) urge its dismissal because the claim is stale in equity, as the creditor had neglected to prove it up at an earlier date. On the cases cited, this constitutes no ground for rejection. The fund was still undivided and no creditor in any way in-

jured because the claim had not been presented at an earlier day.

On the question of laches it must also be taken into account that long before the master's report on claims a serious question had arisen as to the court's jurisdiction. The decree of February, 1886, was superseded by appeal and remained out of control of the Circuit Court continuously until 1890, just before this petition was filed.

In determining the question of improper delay, this interval cannot be computed.

Pac. Railway v. *Mo. Pacific*, 111 U. S., 506.

Appellees advanced a theory apparently acceptable to the Circuit Court, to the effect that the judgments were taken in the state court to secure an unlawful preference, and the fact that petitioner questioned the federal jurisdiction, amounted to such contumacy as was properly punished by excluding the claim from any participation in the assets.

It was entirely competent for any creditor to raise the question of jurisdiction and withhold presenting his claim until that issue was settled.

As any creditor had unquestionable legal right to take such course, he did not by the exercise of his right put the collection of his claim in peril or authorize a court of equity to withhold its distributive share, or decree its confiscation.

The remarkable theory of forfeiture for contumacy is advanced on the face of a record showing that a large number of creditors, besides petitioners, took judgment in the state court (Rec., 19, 46, 120), that others after the

receivership, seized upon part of the assets of the insolvent corporation and actually secured a preference for themselves (Rec., 58); while appellants successfully resisted an attempt by divers of the creditors, supported by the same counsel who now declaim about unrighteous preferences, to subject the whole estate to the lien of a fraudulent mortgage. (Rec., 11, 40, 66, 68.)

Even if there existed no right to challenge any allowances, or to any lien or priority the Worden judgment was entitled to its rateable share of an undivided fund.

As a general proposition affecting the jurisdiction, appellants submit:

Seventh. The decree dissolving the corporation and the statutory receiver's title took effect by relation, January 11, 1884.

The law expressly enacts that they overreach the master's report on claims and the sale decree herein. Any jurisdiction of this court over the subject-matter of controversy was thereby superseded. The operation of the state law became supreme. Any creditor or stockholder of the dissolved Ohio corporation had the absolute right to require that its assets should be held, sold and distributed under and in conformity to the state law. The action of the Circuit Court, in attempting to sell and administer the assets, was an attempt to judicially abrogate a valid and paramount statute of the state, and was coram non judice.

Evidently these two clashing methods of winding up the affairs of the same corporation, selling its property, distributing its assets and concluding all its creditors, cannot co-exist. One or the other must give way and submit to be wholly superseded and ended. According to correct legal principles, which jurisdiction is dominant?

The Circuit Court proceeded exactly as if there were no state law or dissolution decree thereunder.

It is important to note that the federal jurisdiction thus asserted to override the state law, is not in specific enforcement of any act of congress, or the exercise of judicial power over any of the national subjects specified in the constitution as exclusively within the cognizance of federal courts. The right of the Circuit Court to disregard and repeal the state law was justified distinctly and solely as a lawful exercise of ordinary equity power.

In view of the recent decision in *Scott* v. *Nealy*, 140 U. S., 160, it can hardly be said that the equity jurisdiction to wind up the affairs of embarassed corporations at the suit of creditors at large is accepted doctrine.

In the absence of any federal law or rule establishing some method of procedure for such exceptional litigation and for forcing in or concluding the creditors or the quality of title passed by a sale in case all the creditors do not come in, it is clear that the general exercise of such power to wind up corporations, would be variant in each circuit and in every way unsatisfactory.

On the other hand no possible question can arise upon the validity and effect of dissolution proceedings under the state laws. Its provisions cover the whole range of a national bankrupt law, as applicable to corporations. The statute contemplates both voluntary and involuntary proceedings to dissolve for insolvency. It requires an inventory of all assets, liens and debts. (Sec. 5652.) A warning order is issued for "all persons interested in the corporation to "show cause." (Sec. 5654.) The referee, like a register in bankruptcy, must report on the assets and debts. (Sec. 5655.) On decree of insolvency and consequent

dissolution, a receiver is appointed, whose estate, power and duties are derived, not like a chancery receiver, solely from the court's order, but like an assignee in bankruptcy, directly from the statute.

By force of the mere decree of insolvency and dissolution and his appointment, the statute, without deed, vests in him all the estate and assets of the defunct corporation as of the date of filing the petition and declares him a trustee for the benefit of creditors and stockholders. (Sec. 5658.) All creditors are required to present their claims to him for allowance. He alone has power to collect debts and enforce stock subscriptions. (Secs. 5659, 5660, 5662.) All sales, assignments, transfers, mortgages, conveyances or confessed judgments after petition filed are declared to be absolutely void as against the receiver and the corporate creditors. (Sec. 5661.)

The receiver must convert the assets, declare and pay dividends, and the court's decree approving his report is declared by the statute "to be final and conclusive upon "all the creditors of the corporation." (Sec. 5671.)

This statute of Ohio is in substance and legal effect an insolvent law.

Ex parte Klein, 1 How., 277.
Day v. *Bardwell*, 97 Mass., 250.
Baldwin v. *Hale*, 1 Wall.. 232.
Boese v. *King*, 108 U. S., 379.

It was evidently designed to, and does in fact provide for the exercise of a specially created and paramount jurisdiction and procedure which when properly set in motion excludes all other methods of winding up such dissolved corporations, and forces all parties to the statutory tribunal.

Saylor v. *Simpson*, 45 Ohio S., 141.
Erie Ky. v. *Ramsay*, 45 N. Y., 637.
Pfohl v. *Simpson*, 74 N. Y., 137.

All creditors are by express force of the statute rendered subject to the summary jurisdiction of the court in all matters pertaining to the administration and distribution of the estate of the insolvent corporation.

Att. Gen. v. *Life Ins. Co.*, 77 N. Y., 277.
Reme v. *Ins. Co.*, 59 N. Y., 143.

The law provides a prompt, adequate and impartial remedy to every creditor, and in the absence of a national bankrupt law, the statute restricting the creditors' remedy against property to the prescribed method is in every respect valid and must control the administration and title. There is no distinction between insolvent and administration laws. The estate is withdrawn from the reach of ordinary process.

Federal courts are without power to ignore and in effect abrogate such valid state enactments. They can only be superseded by the enactment of a paramount national bankrupt law.

Sturges v.. *Crowninshield*, 4 Wheat., 122.
Ogden v. *Sanders*, 12 Wheat., 264.

It would probably not be denied, if the present suit had been pending in a state court when the petition for dissolution was filed, that court would upon the decree of dissolution have promptly ordered its mere possessory receiver to surrender possession to the receiver in the dissolution proceedings who was by statute vested with title and the sole power of administration.

To have refused, would be an assertion of the right of

the court exercising ordinary equity powers to disobey and nullify an express and peremptory statute.

Certainly a Federal court not specifically enforcing the Federal constitution or laws, has no more power to disregard and overthrow a valid state law than a state court possesses. Its decrees are of no higher dignity or effect.

Embry v. *Palmed*, 107 U. S., 3.
Live Stock Co. v. *Butcher's Union*, 120 U. S., 141.

The adjudication of insolvency is a decree *in rem*, acting directly on all the property of the insolvent, and requiring all creditors to establish their debts and receive their dividends exclusively in that proceeding.

Williams v. *Benedict*, 8 How., 107.
Peale v. *Phipps*, 14 How., 368.
Bank v. *Thornhill*, 1 Woods, 1.
Younley v. *Lavander*, 21 Wall., 276.

On another ground, the objection to the exercise of a general winding up jurisdiction by the Circuit Court is fatal.

Brown, Bonnell & Co. was a corporation created by and existing under the laws of Ohio. Whatever may be the restrictions upon the power of the states to pass bankrupt or insolvent laws which undertake to discharge an individual debtor or abrogate all remedy to the creditor on contracts entered into before the enactment, or with citizens of other states, there can now be no question as to the supreme power of a state to enact an insolvent law regulating corporations created by itself and prescribing a method for their dissolution and winding up. which, in the absence of any discrimination against creditors who are citizens of other states, can be made exclusive and paramount on all courts and creditors.

The statute thus prescribing a sole remedy for creditors of dissolved corporations is construed to enter into every corporate obligation and all creditors whether domestic or otherwise are in law taken as agreeing thereto.

This doctrine, which is plainly applicable here, has received the explicit sanction of this and other courts.

On the claim of the statutory receiver of a dissolved Missouri corporation, that under the laws of the home state he was entitled to hold and administer all its assets, even when a portion were situated in another state and by a prior suit had been sequestered by a Federal court therein to abide the alleged superior equities of the creditors who were citizens of such other state, this court said:

"Relfe is not an officer of the Missouri state court, but "the person designated by law to take the property of "any dissolved life insurance corporation of that state, "and hold and dispose of it in trust for the use and benefit "of creditors and other parties interested.

"The law which clothed him with this trust was, in "legal effect, part of the charter of the corporation. "He was the statutory successor of the corporation for "the purpose of winding up its affairs. As such he re- "presents the corporation at all times and places, and in "all matters connected with his trust. He is the trustee "of an express trust, with all the rights which properly "belong to such a position. He is an officer of the state, "and as such represents the state in its sovereignty while "performing its public duties connected with the winding "up of the affairs of one of its insolvent and dissolved "corporations. His authority does not come from the "decree of the court, but from the statute. He ap- "peared in Louisiana not by virtue of any appointment

"from the court, but as the statutory successor of the "corporation which the court had in a legitimate way "dissolved and put out of existence. He was, in fact, "the corporation itself for all the purposes of winding up "its affairs."

"Every corporation necessarily carries its charter "wherever it goes, for that is the law of its existence. "It may be restricted in the use of some of its powers "while doing business away from its corporate home, "but every person who deals with it everywhere is "bound to take notice of the provisions which have been "made in its charter for the management of its affairs "both in life and after dissolution.

"By the charter of this corporation, if a dissolution was "decreed, its property passed by operation of law to the "superintendent of the insurance department of the state, "and he was charged with the duty of winding up its "affairs. Every policy holder and creditor in Louisiana "is charged with notice of this charter right which all "interested in the affairs of the corporation can insist "shall be regarded. The appellees, when they con- "tracted with the Missouri corporation, impliedly agreed "that if the corporation was dissolved under the Missouri "laws, the superintendent of the insurance department "of the state should represent the company in all of its "suits instituted by them affecting the winding up of its "affairs."

Relfe v. *Rundle*, 103 U. S., 225.
Can. South R. R. v. *Gebhard*, 109 U. S., 537.

In obedience to such decision the Circuit Court of the Louisiana district discharged its receiver and ordered the surrender of all assets in his hands to the statutory receiver acting under the Missouri law, holding that credi-

tors of a corporation assent to the law of the state of its creation as to how it shall be dissolved; that is, the officers by whom and the place and manner shall be such as the laws of that state provide; that it is solely by and through the receiver in the dissolution proceeding that the assets of the insolvent corporation are to be made available in the payment of debts.

Rundle v. *Life Ins. Co.*, 10 Fed. R., 720.

Other decisions enforce the same principle.

Taylor v. *Ins. Co.*, 3 Fed. R., 465.
Ibid. v. *Ibid.*, 13 *ibid.*, 493.
Davis v. *Ibid.*, 11 *ibid.*, 781.

For the reason that such a law is part of every corporate contract and is binding upon every creditor whether a citizen of the state which created the corporation or not, it necessarily results that an unsecured creditor cannot possibly bring a suit in any court, state or Federal, which may not be dominated by dissolution proceedings under the statute, which when carried to decree will, precisely like a bankruptcy adjudication, suspend his individual litigation and force him to go to the statutory receiver for his dividend on general settlement.

All creditors being parties, the dissolution decree must be held to have been procured by the very complainants who obtained the Federal receivership and such paramount adjudication is equivalent to a stipulation to discharge the Federal jurisdiction.

Tua v. *Carriere*, 117 U. S., 201.

As against this doctrine, the lower court refused to forego its possession or suspend the operation of its decree which had been thus overreached. It wholly ignored the state law and the proceedings thereunder solely upon

the ground that its seizure of the property had been first made and that when the right of a party to prosecute his suit has once fully attached, he cannot be prevented from securing his decree and the fruits thereof by reason of suits brought in any other tribunal.

These views obviously do not take into consideration the paramount nature of the state law.

The line of decisions of which *Taylor* v. *Carryl*, 20 How., is an example, do not furnish any support for the rulings under review. Those cases only sustain the rule that in order to prevent unseemly collisions between the process of different courts, the tribunal first taking possession must determine for itself when to surrender its custody to any paramount claim and will not permit its jurisdiction to be interfered with by the independent action of another court.

No such interference has been attempted. In precise accordance with the rule laid down in *Freeman* v. *Howe*, 24 How., 450; *Krippendorf* v. *Hyde*, and *Russell* v. *East Anglian Ry.*, 3 McN. & G., 104, appellants petition presented the paramount title of the statutory receiver to the Circuit court and asked it to suspend its jurisdiction and discharge its *ad interim* possession.

The doctrine that a party's right to prosecute his suit to decree and satisfaction when once lawfully begun, is by no means without exception. The right to thus proceed may be controlled and wholly taken away in certain cases by supplemental matters by statute and superior title.

Final decrers may be avoided by material matter transpiring after their entry. Chancery practice clearly recognizes such right of avoidance.

Ballard v. *Searles*, 130 U. S., 51.

In a notable instance this court ruled that its own decree in the Wheeling bridge case had been wholly superseded by an act of Congress passed after its rendition.

18 How., 421.

Death, bankruptcy adjudications and decrees in class suits do in many instances operate to control and override the process, custody and decrees of other courts even when the latter jurisdiction had first attached.

This principle of the overreaching force of the dominant statutory jurisdiction is illustrated when a court is required to perpetually stay execution to give effect to a discharge in bankruptcy.

Palmer v. *Hussey*, 119 U. S., 96.
Boynton v. *Hall*, 121 U. S., 457.

The existing custody of assets by a court exercising ordinary powers and not enforcing a specific prior lien thereon has never been recognized as a valid obstacle to the right of a court of bankruptcy to take charge of such assets and subject them to its paramount power of general administration.

In many cases the process and decrees of other courts have been avoided and set aside.

In *Buchanan* v. *Smith*, 16 Wall., 277, a prior attachment, judgment and receivership were thus vacated.

In re Whipple, 6 Bissell, 516, it was held that a receivership under a creditor's bill obtained before the petition in bankruptcy was filed was avoided by the adjudication solely because the statutory jurisdiction was supreme in a matter of general administration.

It was repeatedly decided that when a receiver had been appointed under state statutes to wind up corpora-

tions, the assignee in bankruptcy subsequently appointed, took higher title and had the right of possession.

In re Ins. Co., 6 Bissell, 35.
Platt v. *Archer*, 9 Blatchf., 559.
Thornhill v. *Bank*, 1 Woods, 1.

On precisely the same ground the prior suit and attachment of a state court was abrogated by the later dissolution of a National bank.

Bank v. *Colby*, 21 Wall., 611.

In *Denny* v. *Bennett*, 128 U. S., 489, it was decided that an insolvent law of Minnesota was superior, because the state had unchallenged authority to deal with the property of the debtor within the state and therefore, the assignee's title was, by relation, paramount to the prior levy of a federal attachment.

If the situation had been reversed, and a petition in bankruptcy had been filed against Brown Bonnell & Co. on January 11, 1884, it would not be contended that an equity receivership in a state court could have kept possession of the assets and prevented the bankruptcy court from exercising its higher jurisdiction.

So in the absence of a national bankrupt law, the state insolvent law is supreme and the federal courts have no competency to prevent its operation.

The principle of surrendering the lesser jurisdiction to the paramount statute, of yielding possession to the absolute statutory title, is the same in either instance.

The ruling in *Relfe* v. *Rundle*, 103 U. S., 225, that a federal court holding custody of corporate assets must yield its jurisdiction to the statutory successor of a dissolved corporation armed with an indefeasible title under

a valid law of the state winding up one of its own corporations, has been followed in many cases, and the priority of the state law conceded.

Levi v. *Ins. Co.*, 1 Fed. R., 206.
Taylor v. *ibid.*, 13 *ibid.*, 493.
Fry v. *Ins. Co.*, 31 *ibid.*, 197.
Parsons v. *ibid.*, *ibid.*, 305.

The application of this salutary principle is characterized in the opinion of the Circuit court as "an extraordi-"nary abandonment of creditors to a harsh fate."

The "harsh fate" was certainly self-inflicted. The petition for dissolution was filed long before there was any report in this case on creditors' claims or any decree interlocutory or final, establishing any allowances or equities.

All creditors were parties to the state court suit and bound to know that any decree thereafter taken herein could have no effect as against the title of the statutory successor of the corporation it dissoved.

The opinion of the Circuit court also rests its refusal to discharge the receiver or to allow the state law to administer the affairs of the dissolved corporation, upon sections 5,679, 5,680, which provide for the continuance of pending actions.

While these sections are couched in usual form and contain no exceptional provisions, the court gave them a construction which practically nullified the whole statute and abrogated all right to administer the assets under the state law. The last clause of section 568,0, to the effect that execution may be had and satisfaction or performance enforced by the creditors, assignees, receivers or trustees having the legal charge of the assets of the dissolved cor-

poration in the corporate name, necessarily refers to judgments *in favor* of the corporation.

To construe this language as authorizing an execution on judgments recovered against the corporation, either before or after the dissolution and a seizure and independent sale of property vested in the statutory receiver is untenable and preposterous.

It nullifies the informing principle of the whole law and would give an execution creditor, without any perfected lien, a preference in the assets.

By section 5658 the receiver takes title for the equal benefit of all creditors. By section 5661 judgments subsequent to filing of the petition are void.

No creditors can, under section 5667, obtain any preference unless, at the date of petition, they held mortgages, judgments or other liens upon the property.

This section necessarily imports that all such liens are to be paid in the course of administration and not through separate executions levied on the property after the vesting of title in the receiver.

All administration and insolvent laws withdraw the estate from seizure under ordinary execution.

Youley v *Lavender*, 21 Wall., 276.
Norton v. *Switzer*, 93 U. S., 355.

So section 5666 provides that the receiver shall retain money to pay such claims against the corporation as may be established in suits pending against it, at the date of dissolution.

Plainly, therefore, these two sections, construed in harmony with the spirit of the enactment, were not designed to continue any outside jurisdiction for general adminis-

tration, but only to save from abatement pending actions to enforce individual debts or liens.

No receiverships were saved by these sections. The common law result of complete abatement of pending actions when a corporation is dissolved, was only changed in so far as to save the suit, without preserving the incidents of either a receivership or execution. The suit can be prosecuted only for the purpose of ascertaining the debt, which can then be paid only in the general course of administration.

This construction has been uniformly given to such laws.

In vacating an attachment in *Davenport* v. *Hill*, 10 Met., 320, Chief Justice SHAW said:

"On the appointment of an administrator, who takes "property as a trustee for all creditors, all attachment "on mesne process are dissolved." The suit was saved, but not the incidents.

Collins v. *Duffy*, 7 Law Ann., 39.
Hensley v. *Morgan*, 47 Cal., 622.
Mitchell v. *St. Maxent*, 4 Wall.
Vaughn v. *Sturtevant*, 7. R. I., 372.

"The attachment of the plaintiff having been legally "dissolved by the termination of the corporate existence "of the Insurance company, the plaintiff thereby lost "any lien he might have acquired by his original attach-"ment."

Barker v. *Hill*, 60 Maine, 72.
Bank v. *Little*, 8, S. & R., 207.
Bank v. *Colby*, 21 Wall., 611.

The fact that the decree of dissolution also instructed the receiver not to forcibly seize on the property in the

custody of the Federal court was eminently proper, but that in no way affected the operation of the statute on the corporate assets, or subordinated the proceedings or the title of the statutory officer, or altered the absolute right of any creditor or stockholder to demand in the Federal court that it should yield obedience to a valid and paramount law, and allow the domestic corporations of Ohio to be wound up in accordance with its own statutes.

Exparte Eames, 2 Story, 322.

As unsecured creditors barred by the dissolution decree, the complainants in the Federal court had no longer any subsisting equity to maintain an adverse receivership as against their own statutory trustee.

HENRY CRAWFORD,
Solicitor for Appellants.

October, 1891.

Office Supreme Court U. S.
FILED.
APR 6 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 1543.

LEADVILLE COAL COMPANY AND OTHERS, *Appellants*,

vs.

WILLIAM McCREERY, HENRY TOD AND OTHERS, *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

APPELLANTS' STATEMENT AND BRIEF ON MOTION TO DISMISS OR AFFIRM.

HENRY CRAWFORD,
ATTORNEY FOR APPELLANTS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 1543.

LEADVILLE COAL COMPANY AND OTHERS, *Appellants*,

vs.

WILLIAM McCREERY, HENRY TOD AND OTHERS, *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

APPELLANTS' STATEMENT AND BRIEF ON MOTION TO DISMISS OR AFFIRM.

This appeal is prosecuted from a final decree of confirmation and distribution rendered in an action brought by the Lake Superior Iron Company and others against the corporation, Brown, Bonnell & Co. On a former appeal by that company from a decree of sale, it was claimed that the case was not of equitable cognizance, and that the court erred in appointing a receiver and decreeing a general administration of corporate assets.

This court affirmed the decree, expressly declining to hold that the federal equity power thus exercised was not the subject of successful challenge, but resting the opinion solely upon the consent and active acquiescence of the party then assigning error. 134 U. S., 534.

After the mandate went down, and before any order of sale was issued on the decree, the Coal company and Worden on May 31, 1890, filed a written application alleging that they were judgment creditors of Brown, Bonnell & Co., and entitled to share in the distribution of its assets; that such corporation was created under the laws of Ohio, and by due proceedings in the court of common pleas of Mahoning county, Ohio, such corporation had been judicially dissolved on July 12, 1889, and one Hallett K. Taylor had been appointed as receiver, and under the laws of Ohio, as such statutory officer had become invested with all the estate and effects of such dissolved corporation, charged with the duty of holding, managing and disposing of all such corporate assets, and distributing them among its creditors according to the statute.

They prayed that such corporate dissolution should be noted, and the action be abated by reason thereof and that all corporate assets be delivered over to the statutory receiver appointed in such dissolution proceedings. (Rec., 82.)

The court on the same day entered an order entertaining the application, and took the same under advisement. (Rec., 84.)

Without action thereon or revivor in any way, an order of sale was issued to the special master commissioner on June 3, 1890; the property was appraised at $962,137 and sold on July 22, 1890, to the appellees for $700,000. His report of sale was filed on July 23d. (Rec., 84.)

The appellants filed exceptions to the report of sale with an affidavit and the full record of the judicial proceedings and decree of the State court dissolving the

corporation in support of their objections to confirmation. (Rec., 93 to 122.)

A motion was made to strike out these exceptions (Rec., 123), which was overruled. (Rec., 169.)

Two affidavits were filed to sustain the master's report of sale. (Rec., 124.)

On September 5, 1890, the court delivered an opinion overruling the exceptions and confirming the sale. (Rec., 126.)

On September 22, 1890, the Leadville Coal Company and Worden filed their petition for relief in the distribution. (Rec., 132.)

It alleged that at the institution of the suit and ever since they were creditors of the dissolved corporation on promissory notes issued by it for value.

That on November 22, 1883, the Coal company recovered judgment in the Mahoning Common Pleas court for $11,974.45. and Worden recovered judgment for $17,383.77. Both of which judgments remain in full force and unsatisfied. They averred that they were entitled to share in any distribution of the assets of their debtor. They further claimed that twenty-three designated persons and corporations to whom decretal allowances had been made aggregating over $500,000 were not *bona fide* creditors of the dissolved corporation or entitled to share in any distribution of its assets, but only held notes made by other parties bearing the endorsement of such corporation, and that such contingent liability had never been fixed by the due diligence required by the laws of Illinois regulating such paper, or by demand, protest and notice.

That such allowances were obtained before the master *ex parte*, without defense interposed by either the corpo-

ration or receiver there or before the court and without any evidence showing such diligence, protest or notice.

In consequence of the dissolution of the corporation, petitioners claimed the right to challenge the allowances made on said endorsed paper.

Petitioners also claimed that their judgments were liens on the corporate real estate in Mahoning county. The relief prayed was in the alternative: that the allowances on such endorsed paper be reopened and rejected; that petitioners judgments be allowed priority according to the statutes of Ohio, or if that be denied, then that their claims be ordered paid ratably with other creditors. (Rec., 134.)

The record of the suit in the State court resulting in the dissolution of the corporation, shows that the same was instituted January 11, 1884, by Ellis, Otis, Harris and Hay and Mather, executors, all of whom appear on this record as creditors, and interested in the purchase of the property by appellees. (Rec., 101, 107.)

The judgments of November 22, 1890, in favor of the two creditor appellants were proven up in the dissolution suit, and are embraced in the schedule of corporate liabilities which the statutes of Ohio require the referee to report to the court. (Rec., 120.)

This report was confirmed July 12, 1889, by the Mahoning Common Pleas court, and a final decree rendered dissolving the corporation, appointing Hallett K. Taylor receiver of its estate and effects, to "have all the powers "and perform all the duties which are prescribed by the "statute in such cases made and provided." (Rec., 107.)

On October 1, 1890, responses were filed to the petitions of the two creditor appellants by divers other

creditors in the nature of a demurrer as well as a partial traverse, and an objection to opening up any allowances or including Worden's claim in any decree of distribution. (Rec., 164, 166.)

On the same day, disposing summarily of appellant's petition on the legal questions arising on their face and refusing any opportunity to prove the same, the court entered a final decree confirming the sale, ordering a conveyance to appellees, dismissing appellant's petition, and distributed the proceeds of sale among the creditors, excluding appellant Worden from any participation therein. (Rec., 169.)

The present appeal was allowed from such decree. (Rec., 172.)

First. The appeal was in every respect lawfully taken and perfected and cannot be dismissed.

A motion to dismiss involves the jurisdiction solely.

There are only three grounds upon which appeals to this court can be dismissed: (1) that the amount in controversy will not sustain the jurisdiction; (2) the decree appealed from is not final; (3) that there has been some non-compliance with the acts of Congress or the rules of court regulating the filing of the transcript or the service of citation, or other matters of procedure.

The pending motion wholly fails to point out any objections of this character. The amount in controversy largely exceeds the jurisdictional limit. The decree is in several aspects appealable.

It is an appeal from a decree confirming a judicial sale and ordering a conveyance of title.

Blossom v. *Railroad*, 1 Wall., 657.

Sage v. *Railroad*, 93 U. S., 412.
Sage v. *Railroad*, 96 U. S., 712.

It dismissed absolutely the petitions of the creditor appellants and denied their right to a priority and to Worden even a ratable share of the fund in court.

Fosdick v. *Schall*, 99 U. S., 256.
Savannah v. *Jesup*, 106 U. S., 564.
Trust Co. v. *Loco. Co.*, 135 U. S., 207.

It was a decree finally establishing the rights and priorities of divers creditors as between themselves upon a common fund, and ordering the actual distribution thereof.

The proven dissolution of the corporation which was sole defendant and the vesting of all its estate in Taylor as a statutory receiver, imperatively charged by the laws of Ohio with the custody, disposition and distribution thereof, necessarily involved a question of jurisdiction of the Circuit Court to thereafter proceed to a sale of such estate and distribution of proceeds.

On that question of jurisdiction which was expressly and in apt time raised by appellants, they are entitled to take the opinion of this court. By the act of Congress, approved February 25, 1889, 25 Stat. at large, 693, it is provided that an appeal may be taken in all cases where a final judgment or decree shall be rendered in a Circuit court "in which there shall have been a question involv-"ing the jurisdiction of the court."

These suggestions dispose of any right to dismiss the appeal because of the character of the decree below.

As to the procedure necessary to perfect the appeal and completely establish the jurisdiction of this court the appellees wholly fail to point out the slightest defect.

The printed record shows that the appeal was prayed and allowed and the bond approved in open court at the same term at which the decree was rendered. Therefore, no citation or notice was necessary.

The decree was rendered October, 1890. On November 3, 1890, within the time limited by the rules, the transcript was filed here and appellees have fully appeared thereto. According to all precedents the appeal is without a flaw.

The grounds suggested in the motion to dismiss without exception relate solely to the merits when reached, and do not attempt to question the jurisdiction of the court to entertain the appeal and consider the case on the errors assigned.

It is claimed that the appeal should be dismissed, because the decree now under review was in execution of and in exact accordance with the mandate of this court on the former appeal.

The record furnishes no warrant whatever for this statement. The former appeal was by the corporation. The mandate of affirmance was in the usual form. In the words of this court, "it simply affirmed what had been "done by the Circuit court; it gave no instructions as to "what remained to be done, except that it should be as "right and justice and the laws of the United States should "require. *The Circuit court was left free to determine for "itself what was thus required.*"

Ex parte Sawyer, 21 Wall, 239.

This case does not fall within the principle that when this court reverses a case and sends down a mandate directing the lower court to enter a specified decree, it will not allow a second appeal from that decree, because

it would be in effect an appeal from itself to itself to relitigate its first ruling.

Stewart v. *Salamon*, 97 U. S., 361.

It is well settled that even when decrees have been entered below in execution of a mandate from this court, appeals will be entertained from final decrees which involve proceedings subsequent to the mandate and not before the Supreme court or settled by the terms of its order.

Tyler v. *Maguire*, 17 Wall., 253.
Supervisors v. *Kennicott*, 94 U. S,, 498.

There can be no possible claim that the distributive rights of creditors as between themselves, or the objections to the appraisal or sale, or the effect on the jurisdiction of the Circuit court of the dissolution of the corporate debtor under the insolvent laws of Ohio, were questions "decided on the first appeal" or "settled by "the terms of the former mandate."

These questions are here for the first time, and nothing in the former appeal furnishes the slightest ground for any jurisdictional objection to now hearing them on their merits.

For instance, the proposition involved in the motion that appellant Worden, whose status as a creditor was repeatedly recognized by the Circuit court, with a judgment absolutely conclusive against the company, its stockholders and creditors, is without any remedy by appeal when the Circuit court excludes him from any share in the corporate assets, is preposterous.

The other reasons assigned, that the sale was for a fair price, that the appellants are not creditors and have no right to contest the confirmation or change the order of

distribution, are matters affecting the merits of the appeal and not the jurisdiction of the court to entertain it. On a motion to dismiss they have no weight or relevancy whatever.

As the remaining reason urged for dismissing the appeal, it is urged that the two stockholders, appellants, were not authorized to appear and object to the confirmation.

The record shows they are stockholders. (Page 118.) After the dissolution of the company had occurred and the court was proceeding in an adversary suit without revivor, they were allowed to become parties to the record. The Circuit court expressly overruled the motion to strike out the exceptions of the stockholders and allowed their appeal. (Rec., 169, 172.) This ruling, according to all the cases, was within the discretion of the lower court, and conclusively established their status as parties to the record and consequently their right to appeal. "If they were in a condition to contend below, "they had the right to appeal here."

Ex parte Jordan, 94 U. S., 251.

Second. As there is no color of right to a dismissal, the alternative motion to affirm ought not to be considered or decided.

This proposition is fully supported by the face of the record. On a transcript exhibiting a final decree involving over $5,000, overruling exceptions and confirming a master's sale, dismissing petitions of alleged creditors, distributing $700,000 of sale proceeds, and overruling objections to the jurisdiction of the court itself, an appeal allowed and perfected at the same term and the record lodged here within the time limited by Act of Congress

and the rules, there can be no possible color of right to a dismissal.

It was not expected that the appeal would be dismissed. It is perfectly evident that the motion was made solely to present the application for affirmance.

It is respectfully submitted that the present motion is an abuse of the practice contemplated under paragraph 5 of rule 6 that the pending application ought to be dealt with as an ordinary motion to dismiss and overruled. This has been the uniform construction placed on the rule.

Whitney v. *Cook*, 99 U. S., 607.
Bell's Gap R. R. v. *Penn.*, 134 U. S., 236.

It was not intended that appellees should be permitted to present motions to dismiss, evidently groundless, with no reasonable expectation of success, but solely to force the court to that full consideration of the merits involved in a motion to affirm. While the questions arising on a mere motion to dismiss can be prepared for submission in a brief time, the engagements of counsel will very often prevent them, in the three weeks allowed under this rule, from properly presenting as on final argument the full merits of the cause.

This, however, they will be compelled to do, if the appellant is at liberty under the device of a groundless motion to dismiss, to force a full discussion of the appeal itself.

A motion to dismiss could be presented with as much propriety in every other case on the docket as in this. The inevitable effect of such indiscriminate practice under rule 6 would be to practically abrogate the main rules fixing the order of the causes on hearing and providing for oral argument.

While appellants insist that according to the spirit of the rule the motion to affirm ought not to be considered at all, it seems not only proper but necessary to present some of the questions arising on the appeal so as to show that they are not frivolous, but material, debatbale and meritorious.

Third. The Circuit court erred in proceeding to a decree against a dissolved corporation without revivor by bringing its statutory successor before the court.

The record shows the purpose to bring in the stockholders as co-defendants was abandoned. They were not parties and no decree was asked or taken against them. The corporation was therefore sole defendant. The legal title to all the real estate was in it. There was no mortgage thereon and the action did not seek to enforce any contract or statutory lien. It was an action in every respect, strictly *in personam*. The receiver appointed by the Circuit court was only a possessory officer, the mere hand of the court.

The decree appointing him gave him no title to either real or personal estate and no deed of assignment to him was ever ordered or executed. So far as the Circuit court is concerned the legal title to its property never passed out of the corporation. Prior to the suggestion of dissolution made on May 31, 1890, the record shows the situation was exactly this: The corporation which was sole defendant was the owner and holder of the legal title to the real estate on which its plant was situate, as well as a fund of over $700,000 in the hands of the receiver. (Record, 132.)

The court had adjudged there were no mortgages or liens on any of this property. The realty alone had been

ordered sold; not to enforce any lien, but solely to convert into money, no sale had occurred and no process had been issued ordering one.

Certain allowances by creditors had been made, but no decree of distribution on fixing the payments had been entered.

Obviously the condition of the cause required furthra and important judicial action. Any sale of the realty would necessitate a decree of confirmation to pass title out of the defendant. Other decrees would be required to dispose of the personalty, fix the distributive shares of creditors, order payments and pass the receiver's accounts. Judicial action had not been closed. It was a cause essentially *in fieri*. It was also an adversary proceeding, requiring the presence on the record of an existing defendant owning the property on which the court's orders were to operate.

In a cause pending under such conditions, the lower court was judicially informed that the sole defendant had been dissolved by valid judicial sentence in the court of the state under whose laws it was created.

The Ohio statute declares that by such decree of dissolution the corporation ceases to exist, and by operation of law such decree of dissolution vested the title to all the corporate assets in the statutory receiver or assignee therein appointed. (Ohio Stat., Secs. 5656-5658.)

The Circuit court wholly disregarded the dissolution decree and extinction of corporate existence and proceeded thereafter without any revivor or bringing before the court the statutory receiver and holder of the legal title to all the corporate assets, to issue an order of sale, offer the property thereunder, confirm such sale, order a con-

veyance and distribute the proceeds without mention of the proven dissolution or naming or bringing in the statutory representative. The judicial action was continued exactly as if the corporate sole defendant had been in acknowledged full existence.

It is difficult to conceive on what theory such a procedure can be sustained on a direct challenge for irregularity.

The record shows not only that execution issued, but that decrees in an adversary proceeding were knowingly rendered against a dead corporation which had formerly been sole defendant.

The general rule is that an execution cannot lawfully issue after the death of defendant, and that a sale thereunder passes no title.

Erwin v. *Dundas*, 4 How., 56.
Youley v. *Lavender*, 21 Wall., 276.

It is fundamental doctrine that in all judicial proceedings the death of a defendant renders the action defective, and that his representatives must be brought in before further decrees can be rendered.

Story Eq. Pl., 369.
Danl. Ch. Pr., 1,714.
Green v. *Watkins*, 6 Wheat., 263.

This rule applies to corporate defendants with precisely the same effect as to natural persons. On the question of abatement, Justice Story said in *Greeley* v. *Smith*, 3 Story, 658: " I cannot distinguish between the case of a " corporation and the case of a private person dying *pen-* " *dente lite.*"

"It was a defunct institution and judgment could no

"more be rendered against it in a suit previously com-
"menced than judgment could be rendered against a dead
"man dying *pendente lite.*"

Bank v. *Colby*, 21 Wall., 611.
Mumma v. *Potomac Co.*, 8 Peters, 286.
Bacon v. *Robertson*, 18 How., 486.

The state creating the corporation may modify the strict common law and save the right of action by or against a dissolved corporation, by such method as the statutes provides.

By Secs. 5,679, 5,680, Ohio Stat., the death of such artificial persons is dealt with in precisely the same way as the death of a natural person.

Pending actions if of such character as survive, are not abated but may be prosecuted by or against the proper statutory representatives of the defunct corporation, being "the creditors, assignees, receivers or trustees hav-
"ing the legal charge of the assets of the dissolved cor-
"poration," and the future conduct of the litigation may be "in the corporate name of the dissolved corporation."

Long prevalent and universally accepted practice has established the proper procedure to effect the revivor of an action rendered defective by the death of a party and validate subsequent process, judicial action and decrees.

As adversary litigation cannot proceed in the absence of living parties, the death of the original litigant is suggested and his successor in interest or title is by name brought on the record.

Greenleaf v. *Owen*, 1 Peters, 138.
Taylor v. *Savage*, 1 How, 282.
Hawkins v. *Glenn*, 131 U. S., 331.

Section 5149 Ohio Stat. expressly enacts that an abatement is avoided and a revivor is effected by the allowance by the court of a motion by the representative or successor in interest to become a party to the action, or by supplemental pleading alleging death of party *and naming his successor in interest upon whom service of process must be had.*

The highest court of the state has ruled that this statute is simply an enactment of the general rule on the subject.

Carter v. *Jennings*, 24 Ohio S., 182.

The statute has also received an explicit interpretation by the same court.

When it sought to sustain a writ of error against a dissolved corporation without making the trustees in whom its assets were vested, parties, it was said:

"In order to give us jurisdiction to determine the "ques ions arising upon the assignment of errors, *it be-* "*comes necessary to bring before the court as a party* the "trustees or other persons named in the statutes having "the legal charge of the assets of the dissolved corpora- "tion."

Renick v. *Bank*, 13 Ohio, 298.

Under a similar statute the Court of Appeals of New York ruled that the representatives of the defunct corporation must be substituted on the record by name, otherwise there was nothing interfering with the operation of the common law rule that the dissolution of the corporation puts an end to the action and that all subsequent proceedings were void.

McCullock v. *Norwood*, 58 N. Y., 568.
Sturgis v. *Vanderbilt*, 73 N. Y., 84.

Such failure to bring in the statutory representative is elsewhere declared to be a jurisdictional defect in the judgment.

Reed v. *Bank*, 23 Maine, 321.
Railroad v. *Supervisors*, 48 N. Y., 98.

If this action in the Circuit court was properly within the scope of the statute, and saved from total abatement by sections 5,679, 5,680, those provisions must be construed in harmony with the established practice as enacted by section 5,149.

As the sole defendant had ceased to exist and its estate had by operation of law passed to an official exercising statutory powers, it was especially necessary that by proper order he should be brought before the court so that the record would affirmatively show the corporate death and who was thereafter representing its interest in the litigation as "receiver having the legal charge of "the assets of the corporation."

Knox v. *Bank*, 12 Wall., 382.

Failing in this, the subsequent process and decree are erroneous if not void.

Undeniably the decree of confirmation which is the sale of the property is a decree against the owner, so that he is entitled to his appeal.

This decree of confirmation and distribution is plainly against a dead corporation with no successor brought in, and as said by the Supreme Judicial court of Massachusetts is "wholly void as if it had been rendered "against a dead person."

The suggestion that the law as to abatement or revivor of actions pending at the corporate death only applies to common law suits is wholly untenable. A chancery de-

cree without a defendant before the court conducting the litigation either in his own right, or in some representative capacity is a legal anomaly which cannot exist.

The rulings in *Bigelow* v. *Renker*, 25 Ohio St., 543, and *Taylor* v. *Miller*, 13 How., 287, do not bear upon the regularity of the property sale in this case, still less do they reach the question of the validity of the decree appealed from. Those decisions related solely to ministerial sales, and not judicial action. The only point ruled was, that when real estate was levied on under a *fi. fa.* during the life of the judgment debtor a sale under a *vendi.* after his death was regular, because it related back to the statutory lien fixed by the original levy.

Nothing in these cases gives any support to the doctrine that a court of equity not called on to enforce any contract or statutory lien, can proceed after the death of owner and without revivor to sell his property, confirm the sale, execute a deed and pass a decree distributing the proceeds among creditors.

On principle such judicial action ought to be held void on the same ground that a judgment at law taken after the corporate dissolution and without bringing in the successor official would be a nullity.

On page 15 of the brief in support of this motion it is attempted by an arbitrary use of *italics* to misread the statutes as though its words were these: "No action "pending in any court against any corporation shall abate, "but all such actions may be prosecuted to final judg- "ment, and execution had by the creditors, in the corpo- "rate name."

The court below apparently accepted this unwarrantable construction and largely based its ruling thereon. (Rec., 126.)

This reading ignores the words "having the legal "charge of the assets of the corporation."

The Ohio Code expressly, under different laws, provides for the dissolution and winding up of corporations, not only by assignees and receivers, but by trustees and committees of creditors. For this reason the qualifying words were used to designate the several classes of successors.

It is only "creditors having the legal charge of the "assets of the corporation," who are authorized to conduct litigation in the corporate name.

Especially was a record revivor essential in this case because, by force of express statute, section 5661, the dissolution decree, like all proceedings in bankruptcy, related back to the filing of the petition in January, 1884, which was long prior, not only to the decree of sale, but to the master's report on claims.

Fourth. The sale was not made in accordance with the decree; was for an inadequate sum and irregular and ought not to have been confirmed.

Without elaborating the objections to the decreed confirmation they can be stated as follows:

(1.) Inadequacy of price. The accepted bid was $700,000. The purchasers were parties and of course bound by all irregularities. Bearing directly on the subject of values, the following facts appear in the record.

The corporation had a share capital of $1,500,000 *fully paid up.* (Rec., 111, 118.)

The first two parcels included in the sale being the main plant, rolling stock, etc., and the Mahoning Coal Company, are appraised by the court's own officer at $1,639,000. (Rec., 5, 6.)

It also appears that pending the action there had been gathered into the court's registry net profits of over $700,000. (Rec., 132.) It is in accord with experience that a receivership is not as likely to be as large a profit-producer as good business management otherwise. The court's own figures on a basis of five per cent. yearly income would establish a valuation of about $2,000,000.

These figures ought to carry as much weight on the question of adequacy of price as the mere opinions of persons as to the value of such property. Actual business results produced under disadvantage ought to be as safe a criterion as the conclusions of an expert reached on brief inspection.

According to the test afforded by the court, a portion of the creditors are to get this valuable plant as a going concern with all its good-will and established trade and contracts for one-third of its real value, as shown by its actual income.

While the English practice of opening biddings has not been followed by our courts, when added to the objection of inadequacy, there are irregularities or only slight circumstances of unfairness, the sale will not be confirmed.

The elements of irregularity and unfairness.

(2.) The Ohio laws, Sec. 5,389, as an absolute prerequisite of a valid sale of real estate, requires that it shall be appraised by three disinterested freeholders.

It is the settled law of that state that this requirement is mandatory and enforces a state policy recognized for many years.

Wiles v. *Baylor*, 1 Ohio, 232.
Anonymous, *ibid*, 106.

That a court of chancery has no power to sell the legal title in any other manner, and sales not in conformity with such law are irregular, and as against persons with notice pass no title.

Cassidy v. *Rhodes*, 12 Ohio, 88.
Daniels v. *McBain*, 2 Ohio St., 408.
Houts v. *Showalter*, 10 *ibid.*, 126.
Trust Co. v. *Goodin*, *ibid.*, 357.

This enforces the general doctrine that where express statutory requirements, designed to protect the debtor, are not followed, the sale will not on direct challenge be confirmed. Non-compliance impairs the authority to sell.

Rhonevans v. *Cornin*, 9 Ohio S., 366.
Moncun v. *Zunts*, 11 Wall., 416.

The Ohio law requiring appraisement was therefore a rule of property, the due observance of which was binding on the Federal courts.

Brine v. *Ins Co.*, 96 U. S., 627.
Mason v. *id.*, 106 *ibid.*, 163.

This court has in two cases voided sales for non-compliance with such statutes.

Gautley v. *Ewing*, 3 How., 707.
Smith v. *Cockrill*, 6 Wall., 756.

It is admitted that one of the appraisers is a cousin of several of the creditors interested in the purchase. The affidavits in support of the sale as to Appraiser Neilson are based on the technicality that the employers, "Andrews Brothers," in which creditor Chauncey H. Andrews is interested, is a corporation and not a partnership.

The jury-law of Ohio very broadly declares all persons incompetent who are akin to either party, or stand in the relation of employer or employee. (Sec. 5176.)

The analogy based on other statutory disqualifications has been enforced to determine who are competent appraisers.

Fox v. *Hills*, 1 Conn., 295.

Attachments, levies and sales have been held void because of incompetent appraisers in many cases.

The brother of a creditor is incompetent.

McGough v. *Wellington*, 6 Allen, 505.

A son-in-law.

Wilcott v. *Ely*, 2 Allen, 338.

A nephew.

Fox v. *Hills*, 1 Conn., 295.

(3.) The decree required the whole property as one parcel to be appraised as on a judgment. This must be on actual view to be legal. The affidavit supporting this objection is not traversed.

It is said that the presumption attending the appraiser's return cannot be overcome by affidavit. Evidently it is the only method capable of use and the practice is expressly sanctioned.

Savery v. *Sypher*, 6 Wall., 157.

(4.) The sale ordered by the decree was not only of the mere property, but as appurtenant thereto the executory contracts of the receiver in carrying on the business. It is not denied but that the receiver had advanced about $100,000 for which ore and supplies were thereafter deliverable to the works. Unless the plain words of the decree are to be ignored, the benefit of that contract passed under the sale. It is in effect admitted that the

appraisal made no account of such advances, nor indeed of any executory contracts which manifestly would add materially to the value.

The plant was appraised and sold as an idle piece of property, instead of valuing it as a going property, with pending contract for output and largead vances made for undelivered supplies as the decree required.

All the parties interested, whether as shareholders or creditors, had both the statutory and decretal right to the benefit of the added value resulting from the appurtenant contracts.

(5.) The sale was irregular because Ralph J. Wick, the holder of the legal title to part of the property ordered sold, was not made a party. (Rec., 79.)

Ordinarily it would scarcely be denied that the court would have no power to sell or order a conveyance when the holder of the legal title was not before the court. The policy of the law is against vending defective titles. It will refuse to force bidders to perform such purchases.

O'Hara v. *McConnell*, 93 U. S., 150.
Bible Soc. v. *Price*, 110 U. S., 61.

The objection that the point should have been made earlier is not sound.

If the court at any time discovers that parties essential to complete decree and good title are not on the record, it will at any stage suspend proceedings and order them to be brought in by proper pleadings.

"Before the court ordered a sale it should have cleared "up all ambiguities."

Minn. Co. v. *St. Paul Co.* 2 Wall., 640.

(6.) The exceptions show this purchase was for ac-

count of a combination between certain creditors and stockholders. In Ohio the laws establish a personal liability of stockholders to an amount equal to their stock. A prominent feature of the trust agreement under which the bid was made is that the new company to acquire the assets of the dissolved Brown, Bonnell & Co., shall do two things (1): Hold corporate claims it may acquire without prejudice to a resort to the individual liability of all stockholders except certain Cleveland stockholders; (2) these the new company is to indemnify against such stockholders' liability. (Rec., 95 to 99.)

This is making use of corporate assets to benefit stockholders to the prejudice of creditors.

Railroad v. *Howard*, 7 Wall., 392.

By means of this device, the Cleveland stockholders, by an agreement in advance of sale, and for the purpose of expediting such sale, have, as it were, specifically appropriated the corporate assets to relieve them from any individual liability, leaving all other stockholders to make good their individual liabilities out of their own property. (Rec., 98.)

Not only that, but by article 5, they contribute a fund to buy up claims against the corporation at half their face value for the declared purpose under article 7, of enforcing the individual liability of their co-stockholders for par.

Such a compact in effect accomplishes a fraud on creditors, and is plainly a device to manipulate the corporate assets, so that some of the stockholders shall escape any personal liability, but enforce par liability against their co-stockholders on claims bought at a discount of 50 per cent.

The stockholders who have thus contracted for special indemnity for themselves out of the corporate assets are the same persons who as petitioners procured the dissolution of the corporation. It is evident the confirmation of sale will secure to these parties an advantage and priority out of the common fund to the injury of their co-stockholders.

The purchase is subject to a secret trust that the corporate property bought under such pre-arrangement shall always stand as indemnity for the individual liability of a part of the stockholders. This is contrary to the equitable obligations which the equal sharers in a common fund owe to each other.

Coe v. *Pennock*, 23 Wall., 117.
Jackson v. *Ludeling*, 21 Wall., 616.

Especially a court of equity should refuse its aid to consummate such a bargain when the sale is marked with irregularities and is for a price only about one-third of the actual income producing value of the common estate as shown by the court records.

Fifth. The creditor appellants had the right to challenge the allowances based on the endorsements of the corporation.

If the proceedings in this cause are to be dealt with according to the rules regulating creditors' suits, the practice is well established that the court has plenary power so long as the fund is undistributed, to open the provisional allowance to any creditor and to reject any claim which the new proof shows is not lawfully entitled to share.

"With respect to the form of a decree in a creditor's "suit, the court does not treat the decree as conclusive

"of the debt. It is clear that it is not so treated for all "purposes, for any other creditor may challenge the debt, "and it is equally clear that in practice the executor him- "self is allowed to impeach it."

Whitaker v. *Wright*, 2 Hare, 310.

Approved in

Galveston R. R. v. *Cowdrey*, 11 Wall., 479.

"The authorities abundantly sustain the proposition "also that a creditor who comes in under and takes the "benefit of a decree is entitled to contest the validity of "the claim of any other creditor except that of the plaint- "iff whose claim is the foundation of the decree." 2 Danl. Ch. Pr., 1210.

Richmond v. *Irons*, 121 U. S., 53.

No complaint is made that the application to re-open the allowances is not in proper form and would not under ordinary circumstances require the court to again send the parties to the master's office on that issue.

With the assets all in hand and the distributive shares of creditors yet unsettled by decree, the Circuit court held the petition insufficient in law even if true, refused to hear proof and dismissed it absolutely.

This ruling was based upon the view that the application was an attempt to relitigate matters determined by the former decree and mandate. (Appellee's brief, page 20.)

The findings of the sums due creditors included in the decree of February 23, 1886, are not as between the creditors and the corporation, or as concerns the creditors *inter sese*, final decrees.

They are mere allowances against a fund, and possess

none of the qualities of a money judgment or decree *in personam*. No suit could be maintained thereon.

Hawkins v. *Glenn*, 131 U. S., 319.
Terry v. *Anderson*, 95 U. S., 635.

As mere allowances against a court fund they are only provisional interlocutory, and subject on good cause shown to re-examination, modification or rejection.

Railroad v. *Cowdrey*, 11 Wall., 479.
Railroad Co. v. *Borg*, 117 U. S., 434.

Nor was the Circuit court in any way barred from entertaining the challenge of such allowed claims by reason of the former appeal. The former decree was final only as between the creditors as a class and the debtor corporation which appealed. The affirmance settled nothing as affecting the several creditors as between themselves.

On that subject the only decree which could in any sense be final, was the one now appealed from fixing and ordering its payment of the distributive shares. Up to its rendition the jurisdiction of the Circuit court to adjudge what creditors were entitled to share as well as the amount and priority of each claim was absolute.

It was therefore erroneous in advance of the final decree of distribution to refuse to entertain an offer made in proper form to prove that a large number of claims were not in fact entitled to share in such final decree.

Sixth. The Circuit court erred in refusing relief to the Coal Company and Worden as to their own claims.

The record and brief in support of affirmance fully show that the absolute dismissal of the petition was because they were held insufficient in law on their face and not because the facts stated were unproven. The court

below refused to allow the issue thereby tendered to be heard on proof.

These applications, besides challenging other claims, asked the court to order the judgments of the petitioners rendered by the State courts to be paid in full, or if that was refused then *pro rata* with general creditors.

As to the Coal Company, the court refused to award priority to its judgment and refused to allow Worden to share at all in the distribution.

Reserving until hereafter any discussion as to the right of priority by reason of such judgments, the action of the Circuit court in refusing any relief to Worden was plainly in disregard of the precedents and well established practice.

His petition averred that he was at the commencement of the suit and ever since had been a creditor on promissory notes issued for value by the defendant corporation. That on November 22, 1883, he had recovered judgment on such notes for $17,383.77, which was in full force and a certified copy of the recovery was filed with the petition. (Rec., 132.)

Even discarding the allegation about the judgment, the petition stated a case plainly entitling the applicant to the allowance against the fund of his original cause of action.

His petition being filed in advance of any decree finally establishing and ordering the payment of the distributive shares of creditors, was, according to the general doctrine heretofore cited, in apt time.

Such a suit for distribution must necessarily be construed as a suit for all creditors without distinction, and the primary decree to convert the common debtor's properly into money for future distribution is a decree in the

nature of a judgment for all the creditors, and any creditor has the absolute right to come in.

Att. Gen. v. *Life Ins. Co.*, 77 N. Y., 277.
Griffith v. *Mangam*, 73 N. Y., 611.
Thompson v. *Brown*, 4 Johns. Ch., 642.
Wilson v. *Keeler*, 3 Paige, 164.

If he proves a valid claim against the corporation "then he does prove himself to be a creditor, and as such "is entitled to come in under the decree."

Richmond v. *Irons*, 121 U. S., 44.

The objection is again advanced that this is an attempt to re-litigate matters barred by the former appeal. The original decree did not attempt to shut out any creditors. It did not adjudge that the particular creditors whose provisional allowances were recited in the findings of the court were *all* that should be admitted to distribution, or that none others should come in. An affirmance of such a decree by this court is therefore no more a bar to the usual power of the lower court over a fund in its registry than if there never had been an appeal.

There is no restriction whatever for a court to entertain and allow claims, so long as the final dividend decree has not been entered and the fund is still under its control. This is not only the logical result of the general principles applicable to such causes but rests on express decision.

"In such a case it is well settled that a creditor upon "a proper case made by petition may be permitted to "come in and prove his debt at any time while the fund "or any part thereof is under the control of the court, "notwithstanding the time limited by the master for the "creditors to come in and prove their debts had expired.

"The neglect or omission of one will not preclude his "right to be afterwards let in provided the other creditors "are placed in no worse condition than if all had come in "at the same time."

Att. Gen. v. *Sec. Life Ins. Co.*, 34 N. Y., 271.
Brooks v. *Gibbons*, 4 Paige, 374.
Pratt v. *Rathbone*, 7 Paige, 269.
Warner v. *Hoffman*, 4 Edw. Ch., 393.
In re City Bank, 10 Paige, 370.
1 Newl. Pr., 534.

The judgment roll exhibited in support of the petition was, in the absence of a direct attack for fraud, absolutely conclusive of the status of petitioners as creditors of the corporation and their consequent right to share in dividends.

Stephens v. *Fox*, 82 N. Y., 313.
Burgess v. *Seligman*, 107 U. S., 20.
Hawkins v. *Glenn*, 131 U. S., 329.

The answers to the petition (Rec., 166) and the brief urge the total dismissal of such petition because the claim is stale in equity, and the creditor had neglected and refused to prove it up at an earlier date. On the cases cited, this constitutes no ground for rejection. The fund was still undivided and no creditor in any way injured because the claim had not been presented at an earlier day.

On the question of laches it must be also taken into account that long before the master's report on claims a serious question had arisen as to the court's jurisdiction. The decree of February, 1886, was superseded by appeal and remained out of the control of the Circuit court continuously until 1890, just before this petition was filed.

In determining the question of improper delay, this interval cannot be computed.

Pac. Railway v. *Mo. Pacific*, 111 U. S., 506.

Appellees advanced a theory apparently acceptable to the Circuit court, to the effect that the judgments were taken in the State court to secure an unlawful preference, and the refusal of petitioner to submit without question to the federal jurisdiction, amounted to such contumacy as was properly punished by excluding the claim from any participation in the assets.

The fact of a pending receivership did not oust the jurisdiction of the State court to entertain a suit and render judgment against the corporation. It was also entirely competent for any creditor to raise the question of jurisdiction and withhold presenting his claim until that issue was settled.

As any creditor had unquestionable legal right to take either of these courses, he did not thereby put the collection of his claim in peril or authorize a court of equity to decree its confiscation.

This remarkable theory of forfeiture for contumacy is advanced on the face of a record showing that a large number of creditors, besides petitioners, took judgment in the State court (Rec., 19, 46, 120), that others after the receivership, seized upon part of the assets of the insolvent corporation and actually secured a preference for themselves; (Rec., 58), while appellants successfully resisted an attempt by divers of the creditors, supported by the same counsel who now declaim about unrighteous preferences, to subject the whole estate to the lien of a fraudulent mortgage. (Rec., 11, 40, 66, 68.)

Even if there was no right to challenge other allowances, or to demand any priority of payment, certainly the Circuit court erred in refusing a *pro rata* dividend on Worden's judgment.

Appellants insist that a most important question of jurisdiction is presented by the record. They maintain these propositions.

Seventh. The decree dissolving the corporation took effect by relation, January 11, 1884.

By express statute it overreached the master's report on claims and the sale decree herein. Any jurisdiction of this court over the subject-matter of controversy was thereby superseded. The state law became supreme. Any creditor or stockholder of the dissolved Ohio corporation had the absolute right to require that its assets should be held, sold and distributed under and in conformity to the state law. The action of the Circuit court, after it was informed of such dissolution, was an attempt to judicially abrogate a valid and paramount statute of the state, and was coram non judice.

The jurisdictional issue is sharply defined. Evidently these two clashing methods of winding up the affairs of the same corporation, selling its property, distributing its assets and concluding all its creditors, cannot co-exist. One or the other must give way and submit to be wholly superseded and nugatory. According to correct legal principles, which jurisdiction is dominant?

The Circuit court proceeded exactly as if there were no state law or dissolution decree.

It is proper to note that the Federal jurisdiction thus asserted is not in specific enforcement of any Act of Congress, or the exercise of judicial power over any of the national subjects specified in the constitution. Nor was it the enforcement through the Federal courts of some new equitable right created by state law. The power of the Circuit court to disregard and repeal the state law was justified distinctly and solely as an exercise of its ordinary equity jurisdiction. To declare, that as against prompt challenge, the Circuit courts of the United States possess inherent equity power to wind up the affairs of insolvent corporations, sell their property, distribute the proceeds and conclude all creditors, is to affirm the existence of an exceedingly doubtful jurisdiction.

No rulings of this court justify such a conclusion. In the Moline Iron Works case, 131 U. S., 352, the opinion was very carefully restricted to declaring that such court had jurisdiction to determine whether a case was within its equitable cognizance, and therefore, its ruling on that issue, although erroneous, could not be avoided by a collateral attack.

So, on the former appeal taken only by the corporation, the court with caution declined to decide that as against prompt objection the original bill herein, presented a case properly within equitable jurisdiction and rested its affirmance on the ground that the party assigning error had, as expressed in appellee's present brief, page 21, "practically invited the court to assume control of its "assets and administer upon them for the benefit of its "creditors."

In the more recent case of *Smith Pur. Co.* v. *McGroarty*, 136 U. S., 241, in speaking of a ruling of the Supreme court of Ohio, it was declared that "it proceed-

"ing in part on the theory that the property of an insolv-
"ent corporation is a trust fund for its creditors in a
"wider and more general sense than could be maintained
"upon general principles of equity jurisdiction."

In the absence of any federal or state law establishing any method of procedure for such exceptional litigation or forcing in or concluding the creditors or the quality of title passed by a sale in case all the creditors do not come in, it is clear that the general exercise of such power to wind up corporations, would be variant in each circuit and in every way unsatisfactory.

On the other hand no possible question can arise upon the validity and effect of dissolution proceedings under the state laws. Its provisions cover the whole range of a national bankrupt law, as applicable to corporations. The statute contemplates both voluntary and involuntary proceedings to dissolve for insolvency. It requires an inventory of all assets, liens and debts. (Sec. 5652.) A warning order is issued for "all persons interested in the corporation to "show cause." (Sec. 5654.) The referee, like a register in bankruptcy, must report the assets and a schedule of debts. (Sec. 5655.) On decree of insolvency and consequent dissolution, a receiver is appointed, whose estate, power and duties are derived, not like a chancery receiver solely from the court's order, but like an assignee in bankruptcy, directly from the statute.

By force of the mere decree of insolvency and dissolution and his appointment, the statute, without deed, vests in him all the estate and assets of the defunct corporation and declares him a trustee for the benefit of creditors and stockholders. (Sec. 5658.) All creditors are required to present their claims to him for allowance. He alone has power to collect debts and enforce stock subscriptions.

(Secs. 5659, 5660, 5662.) All sales, assignments, transfers, mortgages, conveyances or confessed judgments after petition filed are declared to be absolutely void as against the receiver and the corporate creditors. (Sec. 5661.)

The receiver must convert the assets, declare and pay dividends, and the court's decree approving his report is declared by the statute "to be final and conclusive upon "all the creditors of the corporation." (Sec. 5671.)

This statute of Ohio is in substance and legal effect an insolvent law.

Ex parte Klein, 1 How., 277.
Day v. *Bardwell*, 97 Mass., 250.
Baldwin v. *Hale*, 1 Wall., 232.
Boese v. *King*, 108 U. S., 379.

It was evidently designed to, and does in fact provide for the exercise of a specially created, and paramount jurisdiction and procedure which when properly set in motion, excludes all other methods of winding up such dissolved corporations, and forces all parties to the statutory tribunal.

Saylor v. *Simpson*, 45 Ohio, 141.
Ayers v. *Wiswall*, 112 U. S., 185.
Erie Ry. v. *Ramsay*, 45 N. Y., 637.
Pfohl v. *Simpson*, 74 N. Y., 137.

All creditors are by express force of the statute rendered subject to the summary jurisdiction of the court in all matters pertaining to the administration and distribution of the estate of the insolvent corporation.

Att. Gen. v. *Life Ins. Co.*, 77 N. Y., 277.
Reme v. *Ins. Co.*, 59 N. Y., 143.

The law provides a prompt, adequate and impartial

remedy to every creditor, and in the absence of a national bankrupt law, the statute restricting the creditors' remedy to the prescribed method is in every respect valid and must control.

Federal courts are without power to ignore and in effect abrogate such valid state enactments. They can only be superseded by the enactment of a paramount national bankrupt law.

Sturges v. *Crowningshield*, 4 Wheat., 122.
Ogden v. *Sanders*, 12 Wheat., 264.

It would probably not be contended, if the present suit had been pending in a state court when the petition for dissolution was filed, that court would upon the decree of dissolution have promptly ordered its mere possessory receiver to surrender possession to the receiver in the dissolution proceedings who was by statute vested with title and the sole power of administration.

To have refused, would be an assertion of the right of a court exercising ordinary equity powers to disobey and nullify an express and peremptory statute.

Certainly a Federal court not specifically enforcing the Federal constitution or laws, has no more power to disregard and overthrow a valid state law than a state court possesses. Its decrees are of no higher dignity or effect.

Railroad v. *Tel. Co.*, 112 U. S., 306.
Live Stock Co. v. *Butcher's Union*, 120 U. S., 141.

On general principles the exercise of judicial power under insolvent and bankrupt laws, as in the case of decedents, necessarily supersedes all other methods of general sequestration, administration or settlement.

The adjudication of insolvency is a decree *in rem*, acting directly on all the property of the insolvent, and requiring all creditors to establish their debts and receive their dividends exclusively in that proceeding.

Williams v. *Benedict*, 8 How., 107.
Peale v. *Phipps*, 14 How., 367.
Bank v. *Thornhill*, 1 Woods, 1.
Youley v. *Lavander*, 21 Wall., 276.

On another ground, the objection to the exercise of a general winding up jurisdiction by the Circuit court is fatal.

Brown, Bonnell & Co. was a corporation created by and existing under the laws of Ohio. Whatever may be the restrictions upon the power of the states to pass bankrupt or insolvent laws which undertake to discharge an individual debtor or abrogate all remedy to the creditor on contracts entered into outside its territorial jurisdiction or before the enactment, there can be no question as to the supreme power of the state to enact an insolvent law regulating corporations created by itself and prescribing a method for their dissolution and winding up which, in the absence of any discrimination against creditors who are citizens of other states, can be made exclusive and paramount on all courts and creditors.

The statute constituting such sole remedy for creditors of dissolved corporations is construed to enter into every corporate obligation and all creditors are in law taken as agreeing thereto.

This doctrine, which is plainly applicable here, has received the explicit sanction of this and other courts.

On the claim of the statutory receiver of a dissolved Missouri corporation, that under the laws of the home state he was entitled to hold and administer all its assets,

even when a portion were situated in another state and had been sequestered by a Circuit court to abide the alleged superior equities of the creditors who were citizens of such other state, this court said:

"Relfe is not an officer of the Missouri state court, "but the person designated by law to take the property "of any dissolved life insurance corporation of that state, "and hold and dispose of it in trust for the use and bene- "fit of creditors and other parties interested.

"The law which clothed him with this trust was, in "legal effect, part of the charter of the corporation. "He was the statutory successor of the corporation for "the purpose of winding up its affairs. As such he re- "presents the corporation at all times and places, and in "all matters connected with his trust. He is the trustee "of an express trust, with all the rights which properly "belong to such a position. He is an officer of the state, "and as such represents the state in its sovereignty while "performing its public duties connected with the winding "up of the affairs of one of its insolvent and dissolved "corporations. His authority does not come from the "decree of the court, but from the statute. He ap- "peared in Louisiana not by virtue of any appointment "from the court, but as the statutory successor of the "corporation which the court had in a legitimate way "dissolved and put out of existence. He was, in fact, "the corporation itself for all the purposes of winding up "its affairs."

"Every corporation necessarily carries its charter "wherever it goes, for that is the law of its existence. "It may be restricted in the use of some of its powers "while doing business away from its corporate home, "but every person who deals with it everywhere is

"bound to take notice of the provisions which have been "made in its charter for the management of its affairs "both in life and after dissolution.

"By the charter of this corporation, if a dissolution was "decreed, its property passed by operation of law to the "superintendent of the insurance department of the "state, and he was charged with the duty of wind-"ing up its affairs. Every policy holder and creditor "in Louisiana is charged with notice of this charter "right which all interested in the affairs of the cor-"poration can insist shall be regarded. The appel-"lees, when they contracted with the Missouri corpora-"tion, impliedly agreed that if the corporation was dis-"solved under the Missouri laws, the superintendent of "the insurance department of the state should represent "the company in all of its suits instituted by them af-"fecting the winding up of its affairs."

Relfe v. *Rundle*, 103 U. S., 225.

Can. South. Rail. v. *Gebhard*, 109 U. S., 537.

In obedience to such decision the Circuit court of the Louisiana District discharged its receiver and ordered the surrender of all assets in his hands to the statutory receiver acting under the Missouri law, holding that creditors of a corporation assent to the law of the state of its creation as to how it shall be dissolved; that is, the officers by whom and the place and manner shall be such as the laws of that state provide; that it is solely by and through the receiver in the dissolution proceeding that the assets of the insolvent corporation are to be made available in the payment of debts.

Rundle v. *Life Ins. Co.*, 10 Fed. R., 720.

Other cases enforce the same principle.

Taylor v. *Life Ins. Co.*, 3 Fed. R., 465.
Ibid. v. *Ibid.*, 13 *ibid.*, 493.

As such a statute is therefore equally binding upon all creditors whether citizens of the same state of the corporation or not, it results that an unsecured creditor of the corporation cannot possibly bring a suit in any court, which may not be dominated by dissolution proceedings for insolvency carried to a decree which, like bankruptcy adjudication, will require him to go to the statutory receiver for his dividend on general settlement.

Bank v. *Colby*, 21 Wall., 611.
Norton v. *Switzer*, 93 U. S., 353.

As against this doctrine the appellee and the lower court assert that as the Federal court first made seizure of the corporate assets in February, 1883, its jurisdiction is paramount to the dissolution proceedings subsequently instituted, and therefore it can rightfully hold and fully administer the assets of the dissolved corporation and ignore the state law and the proceedings thereunder.

That the custody of a receiver appointed by one court will not be disturbed, and that the first seizure of a fund entitles that court to proceed to final decree and administration, are well established rules applicable to courts of concurrent jurisdiction. No such issue is involved in this appeal. The contention as to jurisdiction is not between courts of equal jurisdiction to deal with the fund, but between a valid and paramount state law and a Federal court whose jurisdiction was plainly superseded by the operation of that local law upon a domestic corporation. The statutory remedy becomes paramount and displaces the ordinary equity jurisdiction.

As all corporate creditors are, in legal contemplation, parties to the dissolution proceedings, and are to be held as consenting to that method of winding up, the production of the dissolution decree was equivalent to an application or consent of all creditors to a dismissal of the receivership suit in the Circuit court.

The prior custody of assets by a court exercising ordinary equity powers and not enforcing the specific lien of some individual creditor has never constituted any valid obstacle to the full exercise by a court of bankruptcy of its higher statutory power of general administration.

When the national bankrupt law was in force this doctrine was frequently enforced both as to individual and corporate debtors.

Bankruptcy proceedings supersede a prior receivership under a creditor's bill.

In re Whipple, 6 Biss., 516.

Also a receivership under proceedings instituted by the state authorities to dissolve a corporation.

In re et al. Life Ins. Co., 6 Biss., 35.
Thornhill v. *Bank*, 1 Woods, 1.
Platt v. *Archer*, 9 Blatchf., 559.

Whenever the higher jurisdiction properly asserts its authority, the action of the subordinate authority will be thereby superseded.

Maltbie v. *Hotchkiss*, 38 Conn., 82.

On the same principle the prior suit and attachment of a state court was abrogated by the dissolution of a national bank.

Bank v. *Colby*, 21 Wall., 611.

If the situation here had been reversed and Taylor had

been appointed assignee of the corporation on an adjudication of insolvency under a national bankrupt law, unquestionably that decree would have ousted a pending receivership in the state court, whose object was a general administration.

Here the state law and method of winding up is paramount in the absence of a national bankrupt law and therefore the federal equity receivership must give way and allow the assets to be sold and administered under the state law.

The same principle often enforced in support of a national law is repudiated in the opinion of the lower court, and its relinquishment of a plainly superseded jurisdiction is termed "an extraordinary abandonment of credi- "tors to a harsh fate." (Rec., 127.)

There is no different doctrine involved when a Federal equity court yields its jurisdiction to a paramount state law winding up one of its own corporations, than when a state court surrenders its custody under a national bankrupt law. Nor is the rule insisted on a harsh one. The petition for dissolution was filed in January, 1884, long before any master's audit of claims or sale decree.

The filing of that application was a caveat to all the world. The creditors were bound to know that if they thereafter took a decree by confession, which in substance is likened to a voluntary assignment, that it was by express statute subject to be overreached and avoided by the subsequent decree of dissolution.

The insolvency proceedings were a unit, and the title of Taylor the statutory receiver takes effect as of January 11, 1884, and under Sec. 5661, avoids the decree of February, 1886, herein, and all subsequent proceedings.

Bank v. *Sherman*, 101 U. S., 406.
Conner v. *Long*, 104 U. S., 230.
Chapman v. *Brewer*, 114 U. S., 158.
Buchanan v. *Smith*, 16 Wall, 277.

The opinion rendered in the court below largely rests its refusal to relinquish jurisdiction on Sec. 5,679 and 5,680 as to actions pending when corporate dissolution occurs.

The construction of the statute by the court is in substance that the whole scheme of winding up dissolved corporations as set out in thirty sections of the statute can be rendered nugatory by the two sections as to non-abatement of pending suits.

These two sections did not create any jurisdiction for general winding up or expressly save any such actions.

Exclusive jurisdiction had already been vested by the earlier sections and elaborate provisions for its exercise set forth.

No receiverships or attachments were saved by these two sections.

These provisions, when read in connection with the remainder of the law evidently apply only to ordinary suits by individual creditors to procure judgments, and not to any pending suits for general administration of assets.

The suits against the corporation thus saved from abatement are the same kind referred to in Section 5,666, where it is provided that "if any suit be pending against "the corporation for any demand, the receiver shall re-"tain out of the assets the proportion which would be-"long to such demand if established," etc.

In view of the decisions it would hardly be pretended

that if a common law suit had been pending in the Circuit court at the dissolution of this corporation, and afterwards a judgment had been recovered therein, the assets in the hands of the statutory receiver could have been levied on and sold by the marshal.

Norton v. *Switzer*, 93 U. S., 355.

The construction sought to be placed on these two sections is hostile to the whole spirit and purpose of the act, and by its adoption the operation of the remainder of the law is prevented.

The suggestion is made that the state court by its decree rendered the dissolution proceedings subordinate to this cause. Obviously it had no statutory power to do so nor did it in fact. The law and not the decree fixes the status of the corporate assets, the title of the receiver, the method of administration and the obligation of creditors. The decree expressly provided that the receiver should "have all the powers and perform all the duties "which are prescribed by the statute in such cases made "and provided." (Rec., 107.)

The fact that it also instructed the receiver not to forcibly seize on the property in the custody of the state court was eminently proper and considerate, but that in no way affected the operation of the statute on the corporate assets, or subordinated the proceedings or the title of the statutory officer, or altered the absolute right of any creditor or stockholder to demand that the Federal court should yield obedience to a valid and paramount law, and allow the domestic corporations of Ohio to be wound up in accordance with its own statutes.

HENRY CRAWFORD,
Solicitor for Appellants.

April, 1891.

Supreme Court U.S.
FILED.
MAY 11 1891
JAMES. H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 1543.

THE LEADVILLE COAL COMPANY, CHARLES S. WORDEN, GEORGE M. AYER AND AMY G. AYER,
Appellants,

vs.

WILLIAM McCREERY AND OTHERS,
Appellees.

APPELLANTS' SUGGESTIONS ON MOTION TO ADVANCE.

HENRY CRAWFORD,
SOLICITOR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 1543.

THE LEADVILLE COAL COMPANY, CHARLES S. WORDEN, GEORGE M. AYER AND AMY G. AYER,

Appellant,

vs.

WILLIAM McCREERY AND OTHERS,

Appellees.

APPELLANTS' SUGGESTIONS ON MOTION TO ADVANCE.

The main rule of court regulating the hearing of causes imperatively requires that appeals are only to be heard when they are reached in their order on the regular call of the docket.

The advancement of causes are exceptions to the rule, and the firmly established practice is that the granting of such motions is discretionary and only allowable for imperative reasons.

Ward v. *Maryland*, 15 Wall., 163.

B. & O. R. R. v. *Supervisors*, 131 U. S., XCIX.

Davenport v. *Dows*, 15 Wall., 392.

Orders to advance "are not granted as of course even "when both parties concur, as such an order, if improp- "erly made, would prejudice the rights of other parties "on the calendar."

Miller v. *State*, 12 Wall., 161.

"In the present crowded state of our docket, it is in- "cumbent on us to take care that injustice is not done to "private parties, by the unnecessary advancement of "causes affecting public interests. To that end we now "hold that we will not give preferences to cases in which "the execution of the revenue laws of a state is enjoined, "unless it sufficiently appears that the operations of the "government of the state will be embarrassed by delay."

Hoge et al. v. *Richmond, etc., R. R. Co.*, 93 U. S., 2.

"The question involved may be of public importance, "but that does not necessarily entitle the parties to a "hearing in preference to others. Practically, every "case advanced postpones another that has been on the "docket three years awaiting its turn in the regular call. "Under these circumstances we deem it our duty not to "take up a case out of its order except for imperative "reasons."

Carter v. *Greenhow*, 109 U. S., 65.

As the first reason upon which this motion is based the appellees claim "that this case has been once adjudicated "by this court upon its merits."

This undertakes to invoke the discretionary power to advance under the fourth clause of rule 26. "Cases "once adjudicated by this court upon the merits, and "again brought up by writ of error or appeal, may be

" advanced by leave of the court on motion of either " party."

I am unable to find that any application has been granted under this clause or any interpretation fixed upon it by the court. Its text and natural import seem to contemplate only such cases and litigants as appear here a second time to " again " relitigate the precise questions which were " once adjudicated on the merits."

This appeal is not within the spirit or letter of this regulation. The appellees are here for the first time. So are the appellants. The controversy between these new parties arose after the former appeal, and is not presented for the first time.

Nothing has ever been decided before by this court which bears even remotely on the merits of the present appeal. On the application to dismiss or affirm it was contended as it is on this motion that the pending appeal ought to be dismissed, because it was a second appeal from a decree rendered in compliance with the mandate of this court.

This assertion was unfounded and *Ex parte* Sawyer, 21 Wall., 239, was conclusive authority against that contention.

There is no basis whatever for the assertion that this appeal has been once adjudicated upon its merits.

Nothing transpired on the former appeal between other parties, which bears in any way upon the regularity or validity of the sale, or the effect upon the jurisdiction of the lower court of the corporate dissolution under the insolvent and winding up statutes of the state, or the rights of the creditors between themselves or the power

of the court to deny to certain creditors the right to share in the fund..

These are controversies presented by new parties and for the first time, and have never before been either presented, discussed or decided.

It is respectfully submitted therefore that the motion is not in any way whatever warranted by the fourth clause, because the matter of this appeal has never before been adjudicated, and the parties and controversy are here for the first time.

The second reason to support the motion is not stated with any precision.

It is a fugitive, partizan and grossly unfair recital of what is stated to be the controversy. In connection therewith it is claimed that the case ought to be advanced in order to speedily terminate an "expensive" receivership and enable the assets of the corporation to be more speedily distributed and the question of title settled.

Although not definitely claimed the evident purpose of this recital is to state a case of such "special and peculiar "circumstances" so as to justify the court in exercising the discretion contemplated by the seventh clause of rule 26.

There is no showing by affidavit or otherwise of any "expensive receivership" or any special or peculiar injury which requires that this civil cause should be given a preference over others upon the docket. Quite to the contrary, the opinion of the district judge (Printed Record, page 132) declares that the beneficial results of the receivership is a proper subject of congratulation, as it has by wise management accumulated a very large fund.

There is therefore no showing whatever of any pecu-

niary injury to justify the promotion of this cause. Other appeals equally important to the respective litigants involve receivership, titles and distribution of assets.

Naturally they desire a speedier hearing than is afforded by awaiting the call of the calendar. But the fact that appeals here involve large interests, delay the distribution of assets or the settlement of title or the termination of a sequestration are ordinary and quite common circumstances.

The personal desire of some of the parties to secure an early decision of their own cases does not constitute "special and peculiar circumstances" justifying the taking of a cause out of its order, nor has this court ever recognized such matters as sufficient reason for advancing a cause.

Even matters of great public importance do not necessarily entitle the parties to a hearing in preference to others. "We deem it our duty not to take up a case "out of its proper order except for imperative reasons." (109 U. S., 65.)

No imperative reasons have been shown and the motion should be denied.

HENRY CRAWFORD,
Solicitor.

In the Supreme Court

OF THE

UNITED STATES.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, and
AMY G. AYER,
Appellants.

vs.

WM. McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, and
CECIL D. HINE, et al.,
Appellees.

No. 969.

October Term,
1891.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

From Confirmation of Sale and Distribution of Proceeds.

BRIEF OF APPELLEES,

BY

CECIL D. HINE and
CHARLES C. BALDWIN,

INDEX.

Statement of Facts, page 3.

Position of Appellants page 5.

Papers in nature of Pleadings, page 6.

Synopsis of Objections to Confirmation, and of Answers thereto, page 7.

Objections claimed to Confirmation argued, page 9.

1. Appraisal claimed not to be in view of all the property, page 19.
2. Wick, Appraiser, nephew of a creditor, page 20.
3. Claimed another in employ of creditor, page 21.
4. Appraisers ignore unfinished contracts, and
5. Receiver had pending contracts for ore, page 21.
6. Inadequate price, page 22.
7. Announcement made by receiver of offer of sale, page 22.
8. That purchasing trustees had instituted suit against the corporation, page 23.
9. Action abated by an order of dissolution in a subsequent suit in the State Court.
    1. State decree subject by its terms to this suit, page 10.
    2. Subject by State Statute to this suit, pages 10–16.
    3. Subject by rules of equity to this suit, page 16.
    4. After decree ascertaining rights of creditors and decree for sale of premises in possession of Court to pay them pro rata the action cannot abate, page 18.
    5. The cause of abatement if any having been previous to the hearing of this Court on the merits is now too late, page 19.
10. Former decree embraced coal leases, legal title in trustee, not party. Bad in fact and law, page 8.

Fraud claimed against stockholders, but no evidence or law, pages 9 and 23.

Motion to change the distribution ordered by previous Decree and Mandate, pages 8 and 25.

Conclusion, page 27.

Supplement after brief of appellant, page 29.

STATEMENT.

This is an equity suit commenced in the Circuit Court at Cleveland, February 21, 1883 (Rec. 1), by the Lake Superior Iron Company et al., creditors, against Brown, Bonnell & Co. (a corporation having large and extensive iron works.) A receiver was then appointed, who took possession of the property of the company, and such proceedings were had that in February, 1886, that Court made a decree (Rec. 68) ascertaining the claims of each creditor (176 in number) finding (p. 79), that they were entitled to the sale of the property to pay them, and directing that the plant be sold by a special master and the personal property by the receiver, to pay Wilcox & Scaife (a mechanic's lien), and (Rec. 79) to pay the other rcreditors *pro rata*, except charging against two (not appellants) a preference gotten by them elsewhere.

This action has already been before this Court by appeal by one of the creditors (opinion of Mr. Justice Field, Florence Mining Company vs. Brown, Receiver, 124 U. S. Rep. 385), and again the general decree mentioned was appealed from by the corporation of Brown, Bonnell & Co. (Brown, Bonnell & Co. vs. Lake Superior Iron Company, et al., No. 227, October Term, 1889), and affirmed by this Court in April, 1890 (reported 134 U. S. Rep. p. 530), and a mandate sent to the court below, directing it to carry said decree into execution.

In exact accordance with that decree and mandate, an order of sale was issued to W. F. Goodspeed, the special master named in the decree, to sell the plant. It was appraised at $962,137.00, and was bid off by William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, as trustees, representing very nearly all the creditors (over 96 per cent.).

The Court confirmed the sale, and ordered the distribution of the proceeds in exact accordance with the previous decree and mandate of this Court.

And to the decree of confirmation of the sale and distribution of its proceeds the appeal was taken.

The record is of some length, in fact embodying selected parts of the original record, counsel for appellants desiring to open the decree of 1886, and the record embodying also the whole record in two cases in the State Courts of Ohio; but the only parts of these records necessary to this hearing are the judgments or decrees therein.

In August, 1890, the appellants, the Leadville Coal Company and Charles S. Worden, styling themselves creditors of Brown, Bonnell & Co., filed exceptions to the sale. (Rec. 93.)

And on the same day the appellants, George M. Ayer and Amy G. Ayer, claiming respectively to be stockholders in the corporation of Brown, Bonnell & Co., joined in the exceptions. (Rec. 99.)

On the 22d of September, 1890, the Leadville Coal Company and Charles S. Worden filed a "petition" (Rec. 132) asserting judgments by confession in their favor in the Court of Common Pleas of Mahoning County, Ohio, 22 November, 1883 (nine months after the commencement of this action), which they claimed to be liens on the property then in possession of the receiver, and entitled to priority over other creditors.

(As to the circumstances and character of these judgments, see the terse language of Mr. Justice Brewer, 134 U. S. Rep., 534 and 535).

The Leadville Coal Company and Charles S. Worden had also filed, 23 May, 1890 (Rec. 81), a suggestion of the "dissolution" of the corporation of Brown, Bonnell & Co., and asked that the Court order the property which had been in its possession to be handed over to a receiver appointed July, 1889, by the State Court, in a suit subsequent in date to this, on the grounds that this suit had abated. The State receiver does not appear or claim the premises.

Although the exceptions (Rec. p. 94) state a sacrifice of the property as the ground of exception, no witnesses were introduced to support that claim. The sole witness offered by appellants, was the affidavit of Mr. Crawford himself (Rec. p. 100), which does not state that. See Opinion, page 131.

POSITIONS OF APPELLANTS.

It may not be out of place to say a word about the position of the several parties appellant to this appeal from confirmation.

First. The Leadville Coal Company at the time of sale was not a creditor and had no interest in fact in the matter. It had been a creditor, and was included in the decree. (Rec. p. 69, Claim No. 25.)

It has had the same president and attorney as Brown, Bonnell & Co. A judgment was confessed to Charles S. Worden (the other appellant) for $18,680 (Rec. p. 146); in 1884 a receiver was appointed on his petition (case occupies pp. 135 to 164 of the Record); page 163 it appears that the receiver of the Leadville Coal Company sold its claim in this cause to Edward E. Ayer. So that the claim of the Leadville Coal Company passed to a receiver appointed by the State Court, and from that receiver to Edward E. Ayer, long before the Leadville Coal Company filled "the petition" or exception referred to.

Edward E. Ayer makes no objection to the sale.

Second. Charles S. Worden is not in the decree and mandate of this Court. (Schedule Rec. 69.)

It is not denied that in November, 1883, he recovered by confession in the Mahoning Common Pleas a judgment against Brown, Bonnell & Co., after the present suit (Rec. 132 and 165). It is claimed to be without consideration, fraudulent and void. (Rec. 165.)

It was one of the judgments mentioned by this Court (134 U. S. 532 and 535.) (Schedule p. 46 Rec.)

He appeared before the decree on the merits in this case to contest the creditors in the interest of Mr. Ayer. (March 1, 1884, Rec. p. 40; answer to intervening petition; and May 2, 1885, exceptions to report, Rec. p. 66.) But of all the creditors in the confessed judgments, he alone never ventured before decree to ask the allowance of his claim before the Court or Master. Nor could this have been an oversight or mistake, *for his precise attention was called to it* by a motion to strike his name from his pleadings for that very reason. (Additional Record in Cause 227, October Term, 1889, pages 218 and 219.)

Third. George M. Ayer and Amy G. Ayer, were simply stockholders (Rec. p. 99) appearing after decree to object to the sale of the assets of the corporation, in a suit where the corporation was still a party. Nor was their appearance instead of that of the corporation waived, for it was *expressly objected to*. Motion by appellees, page 123, filed 28 August, 1890.

Their case was much weaker than Taylor vs. Holmes, 127 U. S. Sup. Ct. Rep. 489. For not only was "there no reason why the suit should be brought by the two stockholders instead of the corporation itself," (see as to New York Statute p. 492) but in the case at *corporation* was actually a party.

kins *v.* Glenn, 131 U. S. Rep., 331, where not allowed to appear although the corpo-

d. PLEADINGS SINCE FORMER APPEAL.

The papers in the nature of pleadings or motions filed since the decree and mandate of this Court are:

1. 31 May, 1890, a "petition" of the Leadville Coal Company and Charles S. Worden to declare the suit abated (Record p. 82).

2. 22 Aug., 1890, exceptions by same to confirmation of sale (Record p. 93.)

3. Same date, similar exceptions by George M. Ayer and Amy G. Ayer claiming to be stockholders in Brown, Bonnell & Co. (Record p. 99.)

4. Motion to strike the exceptions from the files. (Record page 123.) Aug. 28, 1890.

5. 22 Sept., 1890. "Petition" by the Leadville Coal Company and Charles S. Worden to give them priority in distribution on judgments confessed since commencement of the suit. (Record p. 132.)

6. Answer of complainants et al. to "petition." (Record page 164.)

7. Answer of sundry creditors to same. (Record p. 164.)

8. Petition of Henry Crawford for an allowance for his services. (Record p. 167.)

THE OBJECTIONS MADE TO THE CONFIRMATION OF THE SALE WERE:

First. That the appraisal was not made on actual view. Not true; see post, page 19.

Second. Appraiser C. B. Wick was nephew to one of the 176 creditors. Not a disqualification in Ohio; see post, page 20.

Third. Another, Neilson, was in the employ of a creditor. Not true; see post, page 21.

Fourth and Fifth. That the purchasers of the plant from the master would be entitled to $100,000 advanced by receiver or contracts, which were not appraised. Not true, page 21.

Receiver (the officer appointed by said decree to do so) has not yet sold the personalty, and the claim of appellants is based on an entire misinterpretation of the decree, nor does the confirmation direct such interest to be conveyed to purchasers.

Sixth. Grossly inadequate price. No proof and not so. See post, page 22.

Seventh. Receiver gave notice at master's sale that he was willing to sell to the purchaser a small corner piece bought by him not included in the decree or order of sale or offered by the master. Nothing to do with this confirmation. See post, page 22.

Eighth. Purchasing trustees caused to be instituted some months before they had an existence a suit in State Court to dissolve the corporation.

What if they did? But they did not. Post, page 23.

Close of eighth and ninth. Suit abated on decree of the State Court, July, 1889, dissolving the corporation, page 9.

Answers:

1st. *The decree in State Court was in terms subject to the U. S. Court suit. Post, page* 10.

2d. *The State suit was under Ohio R. S.* 5673, *and is governed by that and other sections contained in Chapter* 5, *Division* 7, *Title* 1 §§ 5651-5688, *relating to dissolution of corporations,* 5673 *and* 5679. *Sections* 5680 *and* 5684 *pro-*

vide that no suit pending against the corporation shall abate but may be continued in the name of the corporation. Post, pages 10-16.

3d. *Outside of express statute, suits to enforce creditors' liens on corporation assets do not abate by dissolution of the corporation especially when the assets long before the proceedings in State Court commenced were in possession of the Court, and after decree rendered to subject them,* page 16.

4th. *And never good even as to an individual after decree ascertaining the debt and rights of creditors and directing the sale of property to pay it,* page 18.

5th. *The objection, if good, is too late. Post, page* 19.

Tenth. The decree of sale includes five coal leases to R. J. Wick, trustee, and he not a party.

1st. He was and is a party. Rec. p. 8. Supplemental bill. Subpœna served case No. 227, October Term, 1889. Additional record p. 11. Demurrer by him p. 29, same record.

2d. This objection, if good, should have been taken on previous appeal to that decree.

3d. Would only be as to R. J. Wick and not to strangers.

4th. It is not good in law. Opinion Record p. 131.

5th. The order of sale followed exactly the previous decree affirmed by this Court.

MOTION TO CHANGE DISTRIBUTION.

On application to change the application of proceeds of sale. (Rec. p. 131.)

The Leadville Coal Company and Charles S. Worden set up respectively judgments by confession in State Court in November, 1883, claimed to be liens superior to the decree in this suit, commenced in February, 1883.

This claim cannot be good in law; and if so, should have been made before the decree and mandate; and in fact the status of these judgments was determined by this Court on appeal on merits. See 134 U. S. Rep. 535.

AN OBJECTION to the confirmation named by the Ayers as stockholders was that the agreement under which trustees were appointed was void against stockholders. (Rec. p. 99.)

This, though named in the motion, was not presented either in proof or argument below, and wisely not. Post, page 23.

OBJECTIONS TO THE CONFIRMATION.

These objections, so far as they were presented by counsel in a very long oral argument in Court below, are discussed in the opinion by Judge Ricks, concurred in by Judge Jackson, Record pp. 126-132. The objections *seriatim* appear in the Record, pages 93-99, and are claimed to be supported by the affidavit of Henry Crawford, pp. 100-101.

The decree (p. 80) directed the property to be appraised, advertised and sold as upon judgments of law.

The R. S. of Ohio § 5389 provide:

"When execution is levied upon lands or tenements the officer who makes the levy shall call an inquest of three disinterested freeholders who shall be residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon actual view, and such freeholders shall forthwith return to such officer under their hands an estimate of the real value of the property in money."

The appellees are obliged to prepare this brief without having before them the brief of appellants. If, however, appellants take the same course as on argument of merits on motion to dismiss or affirm, it will be insisted that the main objection to the proceedings below is to quote their brief then filed:

CLAIM THAT THE SUIT ABATED 9th OBJECTION.

"That the Circuit Court erred in proceeding to a decree against a dissolved corporation without revivor by bringing its statutory receiver before the Court."

This objection as stated below (Rec. p. 95) is:

"That this action abated on the dissolution of such corporation by judicial decree and said Taylor, the receiver (in State Court) who now under the statute is vested with the title to all the corporate assets, has not been made a party to this suit in any way."

This was claimed on argument below to be the main reliance of the exceptors (appllants) and occupied much time.

Exceptors had abundance of cases to show that ordinarily cases at law pending against a corporation abated at dissolution. That was all they did have, and we admit it all. There are several reasons why the suit and decree already made on the merits did not abate, and the discussion of all will not admit the weakness of any.

1. *The Decree of the State Court was especially made subject by its terms* (Rec. 107) *to the present suit.*

The proceedings for dissolution relied on are in the Record, pages 101-123. The decree is on page 106, July 12, 1889, and the corporation is dissolved, and the Court appoint H. K. Taylor receiver, but (p. 107) "inasmuch as it appears to the Court that the estate and effects of said Brown, Bonnell & Co., are at the present time in the hands of a receiver appointed by and acting under the orders of the Circuit Court of the United States for the Northern District of Ohio, it is ordered that the receiver hereby appointed shall not interfere with the possession of the receiver appointed by said Federal Court of the effects and assets of said corporation."

The State Court had evidently no intention to interfere with the progress of matters in the Courts of the United States by its decree but the petitioners (solvent stockholders) evidently desired by thus proceeding to put an end to further mischief in the use of a corporation where its stock was only of value to make new debts and to obstruct creditors or oblige them to buy off opposition.

2. *The Statute of Ohio under which the dissolution was decreed says it shall not abate but continue in the name of the corporation.* Ohio R. S. 5679 et al.

The proceedings in the State Court was by solvent stockholders (Dan P. Eells et al. p. 107), owning 1-5 of the stock ($300,000).

The suit for dissolution (Rec. p. 107) was commenced January 11, 1884, and was under Revised Statutes of Ohio of 1880, Title 1, Division 7, Chapter 5, Sections 5651-5688. The petition was filed under Sec. 5673, by one-fifth of the stock holders.

Ohio R. S. 5679 provides: **"No action shall abate by dissolution of corporation."**

"No action pending in any Court in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether the dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment by the creditors, assignees, receivers or trustees having the legal charge of the assets of the corporation in its corporate name."

How completely, even at law, an action does not abate under such proceedings is shown by R. S. 5680. **"Judgments by or against such corporations may be enforced."** "Upon all judgments in favor of or against any such corporation, whether such judgments exist at the time of the dissolution, or are afterwards obtained in actions pending at the time of the dissolution, execution may be had, and satisfaction or performance of the same enforced by the creditors, assignees, receivers or trustees having the legal charge of the assets of the dissolved corporation, in the corporate name of the dissolved corporation."

And R. S. 5693-5686 read as follows: 5683. **"Dissolved corporation may prosecute action in its own name."**

"A corporation may, at any time after its dissolution, whether the dissolution occur by the expiration of its charter or otherwise, prosecute any action in and by its corporate name, for the use of the party entitled to receive the proceeds of such action, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued, in favor of the corporation, in the same manner, and with the like effect, as if it were not dissolved.

5684. **"May be sued by corporate name; service of process."**

"Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued, or which, but for the dissolution, would have accrued against it, in the same manner, and with like effect, as if it were not dissolved; and all process by which action is instituted against such corporation may be served by the sheriff or other proper officer, by delivering to any one of the assignees, trustees, receivers or persons having charge of its assets a copy thereof or by leaving such copy at the residence of any such assignee, trustee, receiver or person."

5685. **"Judgments for or against may be revived."**

"Judgments in favor of or against a dissolved corporation, whether rendered before or after its dissolution, and which become dormant, may be revived in favor of or against it, as the case may be, in and by its corporate name, in the same manner, and with the like effect, as if the corporation were not dissolved; and in all cases of such judgments against any such corporation the writ of summons or other process shall be served in the manner prescribed in section *fifty-six hundred and eighty-four.*"

5686. **"Error may be prosecuted on judgments for or against."**

"Petitions in error upon judgments may be prosecuted in favor of or against any such dissolved corporation, and by its corporate name, in the same manner, and with the like effect, as if it were not dissolved; and process thereon against it shall be served in the manner prescribed in section *fifty-six hundred and eighty-four.*"

It was argued at length below that as the petition was filed under R. S. 5673, first passed in 72 O. L. 67, that R. S. 5679, first passed in 41 O. L. 1, did not apply. Waiving the proposition that two statutes passed upon the same subject matter are to be construed together, counsel resident in Illinois, and therefore excusable, seem not to be aware that the Ohio Revised Statutes of 1880 were passed as a body, and the prior acts were repealed.

(R. S. 7348, and repeals prior.) Still it would seem as if this chapter (V. Dissolution of Corporations §§ 5551–5688), might have itself shown that these sections were akin.

The appointment of a receiver in July, 1889, by the State Court was made in pursuance of R. S. 5656 because the section made this a formal part of the decree. See below.

That receiver himself neither appears nor makes any claim to the property.

He is a capable Ohio lawyer and well knows that the Ohio law and practice in such cases is exactly similar to the action of the Circuit Court.

The statutory decree of dissolution is universally understood as not applying to pending actions nor could the statute itself be more clear that it did not.

It is said by counsel for appellants that the decree of dissolution related back to the commencement of the State suit. But the Ohio Statute reads otherwise.

Section 5656 reads:

"When a report is made if it appear to the court that the corporation is insolvent or that a dissolution thereof will be *beneficial to the stockholders* and not injurious to the public interest, or that the objects of the corporation have wholly failed or been entirely abandoned or that it is impracticable to accomplish such objects, a judgment shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects and the corporation shall *thereupon* be dissolved and shall cease."

Suppose, however, the decree was by relation at the commencement of the State suit. We see no difference.

That suit was commenced January 11, 1884 (Record p. 101), while the suit we are litigating was commenced February 21, 1883, nearly a year before.

Section 5658 provides what estate the receiver shall have.

"Such receiver shall be vested with all the estate, real or personal, of the corporation from the time of his having filed the security hereinbefore required, and shall be trustee of such estate for the benefit of the creditors of the corporation and its stockholders; and he shall have the power and authority conferred by law upon trustees to whom assignments are made for the benefit of creditors."

Now, whether he was invested with the estate "from the time of his having filed the security" or at the commencement of the suit by stockholders in which he was appointed—whether his power and authority had been from an "assignment made for the benefit of of creditors" at the commencement or end of that suit is immaterial, as the United States Circuit Court had possession of all the assets under its suit, as seen nearly a year before the State suit was commenced.

The counsel for appellants in his prior brief claimed three cases in favor of his position, but all by the course of reasoning on differing statutes are in favor of appellees.

The first is the case of Renick vs. Bank 13, Ohio 298, where he quotes:

"In order to give us" (the Supreme Court) "jurisdiction to determine the questions arising upon the assignment of errors it becomes necessary to bring before the Court as a party the trustees or other persons named in the Statutes having the legal charge of the assets of the dissolved corporation."

That case was decided in 1844 on the Statute passed March 10, 1843, and was a writ of error decided on the ground. p. 299.

"Section 1 of the act provides only for the prosecution of suits *then pending*. This writ of error *was not then pending*. Section 2 only provides for the enforcing of judgments existing at the expiration of the charter or judgments obtained afterwards in suits, etc., pending at the time, and therefore does not embrace a proceeding like this. Section 3 provides that all suits pending in which the corporation was a party and which had abated by the dissolution should be revived, and might be proceeded in by the creditors, assignees, receivers or trustees having the legal charge of the assets of the corporation in all respects as if such abatement had not occurred. The provisions of this section authorized the Court of Common Pleas to proceed and render judgment in the name of the Bank of West Union. It was an action pending which had abated in January, 1843, and was received on March 10, 1843, and the judgment if not revived may be enforced by virtue of section 2 of the act."

The view of the Supreme Court of Ohio was the precise opposite of that claimed by appellants.

The Statute operates directly and instantly to prevent an abatement, and in 13th Ohio, on March 10, 1843 (date of passage), on a corporation dissolved by limitation of charter January 1, 1843.

The law we claim for the case in 13th Ohio, that without any revivor the suit continues was recognized, by Judge Ranney for the Supreme Court, in Stetson vs. Bank, 2 O. State 172-174, and same case again in 12 O. State and in Vallette vs. Bank, 2 Handy 1-16. One of these suits was in favor of a creditor against the corporation and the other in favor of the corporation, and the question in each was whether the act included foreign corporations, for it has never occurred to any one in Ohio where similar statutes have existed since 1843 to claim such meaning or effect to them as is claimed by appellants.

Appellants are mistaken in the statement that the statute under which the cases of McCulloch vs. Norwood, 58 N. Y., 568, and Sturgis vs. Vanderbilt, 73 N. Y., 84, is similar to ours and *on the difference* turn those decisions. This appears by examining the Statute, and in 58 N. Y., 562, p. 568 the Court say:

"The 4th is the only section which relates to actions against corporations, and provides that if the corporation shall be dissolved during the pendency of the action the Court shall have power on the application of either party to make an order for the continuance of the action and the same may thereafter be continued till final judgment. Unless such an order be made there is nothing in our statutes interfering with the common law rule that the dissolution of a corporation puts an end to the action."

73 N. Y., 384, followed the 58th on the same ground.

The cases cited by appellants of Reed vs. Bank, 23 Maine, 34, on R. R., in Supervisors 48 N. Y., 98, will also be found to follow closely the Statutes of Maine and New York.

The Ohio Statute is not similar; there is no provision for any action of the Court. The Statute simply says: "No action shall abate," and in the 13th Ohio the Court ruled that the Statute of 10 March, 1843, on *passage* took effect and without revivor.

But say appellants these sections must be construed with R. S. 5149, stating a mode of revivor where it becomes necessary. 5149, Division 3, Chap. 1 providing a mode of revivor as to natural persons (R. S. 5148) will be found to have nothing to do with Division 7, Chap. 5 (5651-5688), dissolution of corporations, and has been repeatedly held by the Supreme Court not to even qualify or limit other sections of the statutes where revivor is necessary. See the case cited by appellants 24 Ohio State Rep. 182, and also in 29 O. St. 86; 30 O. St. 603, 37 O. St. 140 and 38 O. St. 97.

The truth is the whole effort of the appellants is to give such force and effect to the decree of the State Court as the Statutes under which it is made as the Supreme Court of the State in 13 Ohio, cited and the universal practice in the State condemn.

These fully justify the conclusion of the Circuit Court (Rec. p. 127):

"The provisions of the statutes quoted make it plain that after final decree of dissolution in the State Court these proceedings could still have been prosecuted against the defunct corporation in its corporate name and without revivor as was done in this case."

3. *But aside from statute, though actions at law against a corporation to recover a money judgment would abate, as was amply shown by counsel for appellants and undisputed, the case would be different in equity, and especially in a suit quasi in rem.*

It would be monstrous if the United States Court, having in February, 1883, taken charge of property to administer, should in 1890, and after the final decree, be deprived of its jurisdiction accruing seven years before, and be obliged to ignominously deliver over the trust assets to the subsequent State Court.

To whom should these assets go but to the persons to whom they belong, and to whom is the U. S. Court, as trustee, to deliver the property?

The authorities give but one answer, and the authorities are so unanimous that we hope to be pardoned for citing text-books where they are collected, instead of cases.

Morawetz on Corporations, 1031:

"All *legal* remedies to enforce debts due by or to a corporation are necessarily extinguished." The italics are his.

See further 1032-1034, and

Section 1035. "It is well settled that the equitable rights of the creditors of a corporation survive its dissolution although their remedy at law is extinguished and that a Court of Chancery will furnish a remedy to protect and enforce their equitable rights against any assets belonging to the company at the time of the dissolution, &c., &c."

More than all the cases cited by counsel for appellants below are cited by Mr. Morawetz under section 1031, and see Curran vs. State of Arkansas, 15 Howard U. S. 304, quoted by Morawetz, section 1035.

To the point that *suits at law* against a corporation abate by its dissolution, counsel for appellants needed no other authority than National Bank vs. Colby, 21 Wallace, where, page 615, Mr. Justice Field says: "This is a rule with respect to all corporations whose chartered existence has come to an end, either by lapse of time or decree of forfeiture, *unless by statute pending suits be allowed to proceed to judgment notwithstanding such dissolution.*"

Beach on Receivers, Sec. 15 :

"When a receiver has been appointed by one Court, and has obtained possession of the property or fund over which he was appointed, he cannot be in any manner interfered with by a receiver subsequently appointed or *by any proceedings whatever in any other action brought in any other Court.* The Court which first appoints a receiver has the sole disposition of the funds or property received by him as such, and is bound in the exercise of his judicial powers to make administeration of it, &c." And see Secs. 20 and 21, for cases similar in State and Federal Courts.

One of the cases cited by Beach is Pugh vs. Brown, 19 Ohio 202, laying down the rule that the last Court should dismiss the bill. The dissolution case was brought by minority stockholders just after Ayer had confessed the judgments, and the counsel and Court no doubt thought it was prudent to prevent the irresponsible presi-

dent, Herbert C. Ayer, controlling the corporation, from trifling any longer with his power. See case at bar 134 U. S. Rep., p. 530. And see Platte vs. Archer, 9 Blatchford, 559, 568-570, as to cases against a corporation *in rem* or *quasi in rem.*

As the statute and equity are both clear that the suit did not abate, it is perhaps superfluous to give any more reasons; but there are still two more.

4. *After by decree the claims of creditors are ascertained and premises ordered sold to pay them the death of defendant without a revivor does not abate the suit or prevent a sale.*

This question came before this Court in Whitney vs. Bank, 13 Peters p. 6. Page 15, Mr. Justice Story says :

"Is this objection (death of Whitney) itself in principle well founded? That depends upon this: Whether the decree of foreclosure and sale is to be considered as the final decree in the case of a Court of Equity, and the proceedings on that decree a mere mode of enforcing the rights of the creditor and for the benefit of the debtor; or whether the decree is to be deemed final only after the return and confirmation of the sale by a decretal order of the Court. We are of opinion that the former is the true view of the matter. The original decree of foreclosure and sale was final upon the merits of the controversy. The defendant had the right to appeal from that decree as final upon the merits."

In the case at bar the defendant corporation, "Brown, Bonnell & Co.," did appeal and was beaten. 134 U. S. Rep. 530.

So in Ohio the Supreme Court in Beaumont & Herrick, 24 Ohio St., 445.,—where there had been a decree of sale, the debtor died thereafter but before sale—it was held not necessary to revive the suit, though the suit was still pending at death. 25 O. St., 545, 35 O. St. 432, and 37 O. St., 117, affirming 24 O. St., 445.

So in analogy to this in Taylor vs. Miller, 13 Howard U. S. 287. Opinion 293, and in Bigelow vs. Renker 25, O. St. 543, it was held that real estate levied on during the life time of the judgment debtor may be sold after his death without making his representative parties.

5. *In exparte Story vs. Story*, 12 *Peters* 339, *the case supports the syllabus:* "An equity cause having been heard in this Court on Appeal and its merits finally decided and a mandate sent to the Court below requiring it to execute the decree of this Court, the Court below rightly refused to permit the defendant to bring upon the record facts showing that the suit was abated before the appeal (here during the appeal), and that the executor of the complainants ought not to have been allowed to prosecute the appeal of this Court."

The case if fully supported where cited. 11 Wall. 674; 17 Wall. 283.

We now resume the other objections in the order made.

FIRST OBJECTION.

That the appraisal was not made on actual view.

Supported solely by the hearsay evidence of Mr. Crawford, p. 100, that he talked with Caleb B. Wick, one of the appraisers, and was informed that they viewed only the properties in Youngstown and Strothers.

We suppose that even on affidavits, evidence clearly hearsay is no evidence. The return of the Master (p. 84) shows he caused the premises ordered sold to be duly appraised, and that the appraisal was deposited in the "office of the clerk of said Court."

So that opposed to the hearsay of Mr. Crawford is the return of the special Master and the return on oath of the appraisers.

The property claimed *not to be viewed* was "5 leases of coal land in Butler County, Penn." (P. 79 Record.)

There were simply rights to mine, and, never exercised, because of no value.

So the Court concluded. Opinion p. 131.

The statutes of Ohio require no appraisal of personalty; but in this case all was considered by the appraisers, though it was little matter whether these options, not claimed to be of any value, were included or not.

SECOND OBJECTION.

It was said that Caleb B. Wick was nearly related and akin to several creditors (p. 93). The relationship (Record p. 100 and 124 and 125) is as follows:

Wick Brothers & Co., having a claim of $29,208.51 (p. 70, No. 99) is composed of cousins of Caleb B. Wick.

It is correctly stated in Mr. Crawford's affidavit that Caleb B. Wick is a nephew of Henry Wick.

Henry Wick has no personal claim, but Henry Wick & Co. (p. 70, No. 97) have a claim of $11,790.28. There is no evidence, but assuming that Henry Wick is a partner in the firm, and even if he owns the whole claim, his proportion of the assets is very small. The debts in the scedule (June, 1884) were $1,320,000.00, so that at $12,000.00 Henry Wick & Co. would have $\frac{1}{110}$ of the proceeds.

The appraiser's interest as a nephew of the man who could not possibly get over $\frac{1}{110}$ of the proceeds was not very large. But there was produced below a case (1 Conn. 294) holding that the nephew by marriage was not "*indifferent.*"

The language as to requirement of appraisers in Ohio is "*disinterested.*" R. S. Ohio Sec. 5379. Ante p. 10.

A want of interest—what interest has Caleb B. Wick? Henry Wick has lots of children and grand children.

The policy in Ohio has been to consider interested to mean a present or probable future *pecuniary* interest.

The Conn. case was under a special statute and is explained in Kinsman vs. Warner, 113 Mass. 347, where the subject is discussed by Chief Justice Gray, and the Conn. case is shown to be under a special statute and disapproved of for general use. No Ohio case is cited, and that the Supreme Court of Ohio is not too easily frightened by the word "interest" is shown by Thompson vs. Love, (42 O. St. Rep. p. 72) and Goodwin vs. Commissioners (41 O. St. 400), and see Opinion in Record p. 129.

THIRD OBJECTION.

That James Neilson, an appraiser, was in the employ of C. B. Andrews, one of the creditors.

No C. B. Andrews is a creditor, but supposing exceptor and affiant pp. 94 and 100) means that Neilson was in the employ of Andrews Brothers, one of whom was C. H. Andrews—who in fact was one of the partners of Andrews & Hitchcock, creditors (Rec. p. 70, No. 63), we say disapproved.

Mr. Crawford's affidavit is on hearsay—(p. 100) and that Neilson *is*. 27 Aug. 1890 (the appraisal was made in June,) and if we read *was* in June, 1890—it is disapproved by the two affidavits on pages 124 and 125.

FOURTH OBJECTION.

That the appraisers ignored unfinished contracts of the receiver which were of the value of $200,000.00 which were sold in connection with the premises. And,

FIFTH OBJECTION.

That at the time of the sale the receiver had pending contracts for the delivery to him of ore for which he had paid $100,000.00, the right to receive which would pass to the purchaser.

Untrue throughout.

Proof—p. 100 (affidavit of Crawford) hearsay that Receiver Brown told him he had paid $100,000.00 on ore contracts. The legal foundation of the objection is an attempted misconstruction of the decree under which sale was made (Record p. 80 side paging, 130,) that the receiver may sell the personalty (which is not yet done), and next that the purchaser may be required to give bond in the sum of $20,000 to secure the receiver against liability in unfinished contracts in carrying on the business.

If that language gives the purchasers of the plant title to the $100,000.00 claimed to have been paid by the receiver as advance payments for ore, it is news to the purchasers, the receiver and the Court, who gave no title to it in the decree appealed from to confirm the sale and to make a deed and all of whom think it relates to the personalty not yet sold.

SIXTH OBJECTION.

Sale for grossly inadequate price as shown by the report by the receiver.

We suppose the counsel means the statement filed in February, 1883, seven years before the sale (Record p. 5), and which had no legal value on this question, or as to value, even when filed.

It was simply an inventory without any ordered or legal appraisal, undertaken to be used by appellants on the previous hearing (Case 227, Oct. term, 1889, Rec. p. 7) to show that the corporation was solvent. It was disregarded then and itself says at footing: "Plant and other assets at nominal values." Nor does its own "nominal value" increase on examination. No witness or affidavit supports this claim, not even Mr. Crawford's own.

See Opinion, Record p. 131.

The plant was appraised at $962,137.00 and sold for $700,000.00. Two-thirds would have been sufficient under the decree and mandate of this Court. And as to inadequacy see the opinion of Mr. Justice Bradley, 117 U. S. Rep. 192.

SEVENTH OBJECTION.

That at the sale of the plant by the Master the receiver announced that the purchaser at the sale might buy of him a small piece of land bought by him under order of Court to fill a corner. Exceptions, page 94 and affidavit, p. 100.

The decree appealed from does not give purchasers that piece of land, nor have purchasers got it, but how the question of their bid to a master under the decree and mandate of the Supreme Court of the United States turns on another person who is receiver giving them notice that he is willing to sell them another piece, purchasers cannot see. A decree of the Supreme Court is not so easily frustrated. The sale was of the precise lands described in the former decree of this Court and in the precise manner therein ordered.

EIGHTH OBJECTION.

That the purchasers under this decree are trustees and committee for the creditors of Brown, Bonnell & Co., and that on January 11, 1884, they caused an action to be instituted in the Court of Common Pleas of Mahoning County, Ohio, to cause said corporation of Brown, Bonnell & Co. to be dissolved, and a decree was entered for such dissolution July 12, 1889, appointing a receiver, etc.

It is admitted that the purchasers are trustees and committee for creditors—and appointed under the contract (Record pp. 15-27) which was not made until 29 April, 1884 (Record 97), and they could not and did not institute a suit commenced January 11, 1884, 4½ months before, nor were they ever parties to said suit or interested in it. It is little matter whether they were or not, and with the latter part of this exception we pass to the

NINTH OBJECTION.

That this action was abated which has been already argued.

THE TENTH

is also sufficiently answered. Page 8.

THERE IS ONE OBJECTION TO THE CONFIRMATION,

Stated in the exceptions of George M. Ayer and Amy G. Ayer, which was not stated or argued by counsel below:

It is said that the agreement under which the trustees were chosen is void as in fraud of stockholders.

If this objection is to be considered at all, it may be said:

That there is no evidence offered of any fraud or hardship in fact in the agreement. This is not an agreement intended for stifling competition, or lowering the price. Indeed, it was made at a time when, owing to the obstructive skill of the counsel for appellants, it seemed necessary for creditors to combine for protection, and be quick about it.

If the history and purpose of the agreement were in evidence it would appear that it was entered into to *prevent* a sacrifice.

It could hardly have been a combination *against* creditors as it was open to all to sign it.

It was signed by many more than appear on Mr. Crawford's copy (see decree below, p. 170,) and indeed by *very nearly all*, all but about 3½ per cent. It was signed by some creditors who were also stockholders who had already been sued on their statutory liability, and all of whom had debts for money loaned or paid out, and a mortgage on the whole plant to secure them, not to give them a preference over other stockholders, but because they were creditors with mortgage lien.

These stockholders holding debts to $243,000.00 and stock to $300,000.00, agreed to give up their preference by mortgage lien, and to pay in addition the sum of $200,000.00 to be released.

They did not agree to this with delight, nor do they now so view it; and possibly, if the Ayers wish to participate, and we would like it if they would, they may out of Court get the chance, which we hope will be decided to have nothing to do with the confirming of this sale.

It is not claimed that this agreement hurt any creditors, or the corporation, or that the Ayers or any other stockholders ever desired to join in it or were refused. There can be no doubt about the good faith of this agreement, or that it was to prevent a sacrifice. How it hurt any stockholder than those who, being creditors, thought best to and did sign it, we do not see.

No Court has been so marked as this Court in requiring fair dealing and the case cited against us of Jackson vs. Endeling, 21 Wallace 616 is an eminent instance of such desire. But this contract was made in the spirit of that decision and in form was the opposite of that then held invalid. That was a scheme to cause a sacrifice, this to prevent one, then the stockholders participating were to have a part of the property of the corporation *for their stock*— here the stockholders who signed were also *creditors with a mortgage* and were to share only to the pro rata amount of their debts to be ascertained with other claims.

So far from getting any share of the property for *their stock* they were to get nothing but to pay in money in addition.

The kind of competition encountered may be partly guessed by glancing at the previous opinion in this case 134. U. S., Rep. pages 534-5.

It is not true that it was in fraud of any stockholder, and there is and can be no evidence to that effect.

The schemes of one stockholder had to be fought. Mr. Ayer, "the president of the corporation, himself the owner of a large majority of the stock," ($1,000,000) "whose management had wrought it financial ruin," (134 U. S. Rep. 535) who failed with having paid for $800,000, of the property of the corporation only with his notes upon which not one dollar has been collected or ever will be.

Such agreements are valid. Wicker vs. Hoppack, 6 Wallace, 97, and cases there; also the late case in 101 Penn. State 576, Penn. Transportation Company's Appeal.

EVEN THE INGENUITY OF COUNSEL FOR APPELLANTS HAS MADE BUT ONE MORE QUESTION.

By motion filed September 22, 1890 (Record, p. 132), the Leadville Coal Company and Charles S. Worden claim, numbered by them as follows:

1. To have held debts (not particularly described) against Brown, Bonnell & Co. since the beginning of suit (21 February, 1883), and that on November 22, 1883, the Leadville Coal Company recovered a judgment for $11,974.00 and Worden for $17,383.00, both in force.

2. Brown, Bonnell & Co. are insolvent to the extent of several hundred thousand dollars.

3. No dividend yet made.

4. Name a large amount of claims said not to be creditors at commencement of suit, they then holding paper *endorsed* by Brown, Bonnell & Co. not then due nor becoming matured until after this suit was commenced—though endorsed before—that creditors did not use due diligence to hold endorser.

5. As the corporation is dissolved, they have no right to hold.

6. Petitioners' judgments are liens on real estate.

They ask that these claims may be rejected, that their own judgments may be paid in full, or at least *pro rata*.

To this answer was filed (Record, 164) denying Worden having an existing claim at beginning of suit, and the good faith of the judgments, alleging that the claim of the Leadville Coal Company was that already decreed to it, and denying all else.

This is an attempt pure and simple to re-litigate matters determined and settled by the former decree and mandate of this Court.

Their judgments confessed and obtained on November 22, 1883, cannot be a lien superior to that of the general creditors under petition of February, 1883, and no authority is necessary save the previous opinion in this case. 134 U. S. Rep. 535.

The necessity to appellants for attacking the claims named on page 133, is that they were in the prior decree and mandate. The same attack was made in the former hearing before this Court in March, 1890, and was argued by the same counsel in his brief, pp. 50 and 51. (Cause No. 227, October term, 1889.)

Another objection applies to any further claim by the petitioners to share in the proceeds. Both were parties. (See *ante* page 5. The Leadville Coal Company already had a decree (No. 25, p. 69), and Worden had ample chance, if his claim had been *bona fide*. He sets it up now, relying on his confessed judgment of November, 1883, and does not even set forth what his claim was, if any, at the commencement of this suit.

We do not need to remind the Court what may be heard on second appeals.

The syllabus in 96 U. S. Sup. Ct. 461, "The Court will consider on a second appeal *only* the proceedings subsequent to its mandate. The re-examination cannot extend to anything decided on the first appeal," has many cases with it, of both error and appeal. Since the 96th in appeal, 108 U. S. Rep. 92, and a case of appeal before it on this question is Supervisor vs. Kennicott, 94 U. S. Rep. 498, where many prior cases are cited. The very late case of Lewisburg Bank vs. Sheffney 140 U. S. Rep. 445 is quite parallel to the one at bar in the character of the first decree.

SUMMARY.

In conclusion, we submit that not only are the objections taken to the confirmation of the sale technical and frivolous, but also that the history of this protracted litigation shows very clearly that this appeal is for delay only, and is a part of a scheme of delay devised by ingenious counsel.

At the very threshold of this litigation Brown, Bonnell & Co. confessed its insolvency, and practically invited the Court to assume control of its assets, and administer upon them for the benefit of its creditors; and to do this lest some creditors should gain advantage over others.

Not until November 24, 1883, nine months after the Court had thus taken jurisdiction of the property, was any objection raised; and then Brown, Bonnell & Co., by *Mr. Henry Crawford, solicitor*, filed its plea praying for the dismissal of the bill and alleging as a reason that *it* had paid the judgment claim upon which, in part, the bill was based.

This plea was surely not made by a corporation which had been only *temporarily* embarrassed and had recovered its footing so as to be in a position to resume business, for it appears that only two days before the filing of this very plea Brown, Bonnell & Co., by Mr. Henry Crawford, its solicitor, had confessed judgments in the State Courts aggregating over five hundred and seventy thousand dollars, and in the month following, judgments amounting to nearly one hundred and fifty thousand dollars more.

And furthermore, it now comes to light, through the petition filed by Mr. Henry Crawford in his own behalf, on September 22, 1890, (page 167 printed record), that Brown, Bonnell & Co. did not pay even the small judgment mentioned in the plea of November 24, 1883, but that Mr. Crawford himself paid it.

And now after this case had been already once heard by this Court upon an appeal taken by this same counsel, upon a question which the learned Judge announcing the opinion of the Court was

pleased to characterize as *an unsubstantial technicality*, and after the creditors of the corporation, the justness of whose claims it has never occurred to this corporation to call in question, have now been compelled to wait eight years in vain for the payment even of a dividend, this case is again brought into this Court by the same counsel.

The motions and petitions are signed only by the same counsel; the only sworn evidence is the affidavit of the same counsel; the bond for appeal bears no handwriting but that of the one Ayer and his own and he is sole surety. And on page 167 is an application by him (not appealed) for pay for his services *in behalf of creditors* from a fund said by him (p. 133) to be largely insufficient to pay them.

All the objections are purely technical to a sale made in exact pursuance of the mandate of this Court by parties none of whom are entitled to a dollar of the proceeds.

We submit that the whole appeal is plainly for vexatious delay.

CECIL D. HINE,

CHARLES C. BALDWIN,

Solicitors for Appellees.

SUPPLEMENT TO BRIEF OF APPELLEES.

Since the preceding brief was prepared the brief of appellants has come to hand.

A very large share of it is taken up in attacking the former decree of 1886 affirmed by this Court in April, 1890.

Under the practice of this Court it does not seem to us proper to waste its time in discussing such questions, which were very fully presented by the same counsel on the preceding hearing on the merits (No. 227, October term, 1889), but which we are quite ready to argue if the Court desires to hear us upon them.

There can be little mistake about the character of the former decree; it is in the present record, pp. 68–81. After general finding in favor of complainants and other creditors, it finds specifically the claim of each creditor and that they are entitled to the relief prayed for. Then follows a description of the real estate and other property which came into the possession of the Court through its receiver in February, 1883, eleven months before the dissolution suit was commenced. At the bottom of page 79 is the further finding "that the amount herein found due to Wilcox & Scaife is a first lien on property herein described and is entitled to priority of payment in full; that the remaining creditors named herein are in equity entitled to payment of their claims herein stated with interest thereon *pro rata;* that said creditors are in equity entitled to a sale of said premises and property and to payment of their claims and interest out of the proceeds of such sale." Then follows the decree (pp. 80–81) directing the master and receiver respectively to sell the realty and personalty for that purpose.

It seems to us that this decree, affirmed in 1890, cuts out much of appellants' brief and the alleged intervenors, the Leadville Coal Company and C. S. Worden, *were parties to that decree.* (*Ante,* page 5, appellee's brief.)

THE CLAIMED ABATEMENT.

The appellant says but little about the Ohio statute, so awkward for him. He claims at considerable length that the Ohio dissolution act is an insolvent law, a part of the charter, and relates to the beginning of the dissolution suit.

His section 5661 is to be construed with the other sections quoted by appellees, and there is *no possible way of getting over* the express provision. 5679, *ante*, 11 appellee's brief:

"No action pending in any Court in favor of or against any corporation shall he discontinued or abate by the dissolution of the corporation."

Counsel for appellants, at the bottom of page 50 of his brief, in commenting upon section 5680 of the Revised Statutes of Ohio providing for the enforcing of judgments for or against dissolved corporations, is led to precisely the wrong conclusion as to the scope of this section, by quoting the substance of the last clause only of the section, claiming from this part that the section has reference only to the enforcing of judgments *in favor* of the corporation. From a reading of the *entire section* (given in full, *ante*, page 11), it is perfectly plain that this section, thus partially quoted by appellants' counsel, has reference to the enforcing of judgments as well *against* as for corporations after dissolution:

"Upon all judgments in favor of or against any such corporation, whether such judgments exist at the time of the dissolution or are afterwards obtained in actions pending at the time of the dissolution, execution may be had," &c.

And 5679 says:

"No action pending in any court in favor of or against any corporation shall be discontinued or abate," &c.

At the bottom of page 42 is a cool assumption that the State court would in a similar case grant the claim of appellants.

Such practice was never heard of or thought of in the State since the statutes we rely upon were passed. (*Ante*, 15 and 16.) Nor does the State receiver make such claim.

But even *these questions* arose before the affirmance by this Court in April, 1890 (the State decree being in July, 1889), and while Worden and the Leadville Coal Company were parties. (*Ante*, p. 19.)

The case of Relfe *v.* Rundle, 103 U. S. Rep., 225, appellants' brief, 44–45, quoted at length by him, is used without reference to the facts.

Pages 222 and 223. The receiver was thereupon (13th October, 1879) appointed in Missouri, and vested with the property. Rundle and wife, the 5th of the next month, commenced their suit against the corporation, the temporary agent and receiver, and others.

The Court held good the title of the temporary receiver, first in time, as here the title of our receiver (called temporary by appellants) being prior in point of time, *holds.*

These statutory provisions, authorizing the prosecution and enforcement of suits pending against a corporation at the date of its dissolution, are by no means novel or peculiar to Ohio, but similar provisions are found upon the statute books of many of the States.

Beach, in his late work on private corporations, at section 785, says: "The several statutes relating to the dissolution and winding up of corporations generally provide, however, for a continuance of the capacity to sue and be sued."

And there are numerous decisions of the State Courts, as well as of this Court, recognizing the validity and force of such statutes:

McGoon *v.* Scales, 9 Wall., 23;
Michigan State Bank *v.* Gardner, 15 Gray, 362;
Foster *v.* The Essex Bank, 16 Mass., 245;
Franklin Bank *v.* Cooper, 36 Maine, 179;
Miller *v.* Newburg Orrel Coal Co., 31 West Va., 836.

It is substantially claimed (page 17) that as the former decree directed as to *manner of sale* that it should be "as upon judgment at law," that therefore to perfect the lien required an execution and levy.

The form is that usual in Ohio for chancery decrees, and no Ohio lawyer would encounter the ridicule that would follow from abandoning the lien by decree, issuing *an execution* as upon judgment at law and levying it, when he had already an order of sale.

There can be no doubt that all the property was within the *jurisdiction* of the Circuit Court from the time it was within its *possession* in this suit.

If this was not the case the former decree and mandate were all wrong; and, indeed, it is difficult to follow appellant anywhere in his claims without bringing up against the former appeal.

INADEQUACY OF PRICE AND APPRAISAL (pp. 18, 19).

The object of an appraisal is to regulate the adequacy of price. For a brief discussion of the entire *want* of evidence see *ante*, page 22.

There is no proof the plant is worth more—or that it would ell for more—or offer to advance the price—and the claim is made as suggested (*ante*, pages 28 and 5) by parties who are not entitled to a dollar of the proceeds.

The artificial reasoning on pages 18 and 19 of appellants' brief, unwarranted by the record, may be set against appellants' pleading, page 133, record, alleging that the whole assets will not be sufficient by several hundred thousand dollars to pay the debts in this suit—when the plant alone would suffice at the extravagant conclusion of counsel for appellants.

In the matter of the relationship of Wick, pages 19 and 20, appellants' reasoning by analogy to the Ohio jury law is unfortunate for him.

The qualification of the appraiser is to be a disinterested freeholder (*ante*, 9 and 20), and the jury law, R. S. 5176, after declaring as good ground of challenge "2. That he has an interest in the cause," provides relationship as an entirely separate and distinct ground by "7. That he is akin by consanguinity or affinity within the fourth degree to either party or to his attorney."

The law is vastly less strict as to appraisers for the reason that it is quite within the discretion of the Courts to set aside the appraisal if it is thought to be erroneous, or the sale, if in fact it is not advantageous.

But ours is attacked, not directly as disadvantageous, but by claiming inconsequential irregularities.

See opinion of Judge Ricks, concurred in by Judge Jackson, record, page 129.

AGREEMENT UNDER WHICH THE PURCHASING TRUSTEES ACTED.

As to the claim advanced by counsel for appellants that the creditors' agreement under which the purchasing trustees bid in the property is fraudulent.

If we understand the position of counsel, it is that the effect of this agreement and the purchase under it is to make "use of corporate assets to benefit stockholders to the prejudice of creditors." (Page 23.)

This creditors' agreement is set out in full on pages 95 to 99 of the printed record, but there are many more signatures than there appear—over 96 per cent. of all.

In the first place, it was not a compact between a certain class or coterie of creditors, but was open to all creditors, and in fact all creditors were invited to become parties to it; and, by express terms, it was not to go into effect until 75 per cent. of the creditors had signed it. The leading purpose of the agreement was to secure unity of action among the creditors of an insolvent corporation to prevent the sacrifice of the property. The property of the corporation was of such a nature and extent that such unity of action among its creditors was manifestly necessary.

A portion of these creditors were also stockholders of the corporation. They were creditors in about the sum of $162,500. And it is objected that because the creditors, who are parties to this agreement, said to these stockholder creditors that, in consideration of their paying in a specified sum to the new company to be organized under this agreement, these creditors would release such stockholder creditors from their statutory liability, that this constitutes a fraud upon other creditors and other stockholders, and is "making use of corporate assets to benefit stockholders."

In the first place, the statutory liability of stockholders of an Ohio corporation is in no sense an asset of the corporation.

It can not be collected or in any manner called in or used by the corporation or reached by any process against it. It is an obligation from the stockholder directly to the creditor. (Wright *v.* McCormack, 17 O. St., 86; Unstead *v.* Buskirk, *idem*, 113, followed in all subsequent cases.)

And, again, for one or more creditors to agree with one or more stockholders to release such stockholders from this statutory liability, can not possibly defraud or injure any other creditor, for such other creditor's right to seek enforcement of such liability can not be affected by such release.

Indeed, such a release by a portion of the creditors of certain stockholders from this statutory liability would benefit rather than prejudice other creditors, for it would reduce the number of claimants entitled to participate in the fund arising from the enforcement of this statutory liability.

It is to be noted that the debts of these creditors drew no more than a *pro rata* share in the purchase.

The case of R. R. *v.* Howard, 7 Wallace, 392, is in the line of Jackson *v.* Ludeling, 21 Wallace, 616, and with us as shown, *ante*, pp. 23–25.

STATUS OF APPELLANTS.

In regard to the status of the appellants, alleged intervenors, (parties before former appeal, *ante*, p. 5), it is said (page 37) that the "judgment roll exhibited in support of the petition was conclusive." There was no judgment roll exhibited in fact, and there is none in the record.

Pages 135–164 is the record exhibited by us of suit of Worden *v.* Leadville Coal Company to show the sale to Ayer of the Leadville Coal Company's claim.

Pages 104–124 is the dissolution suit. Neither record discloses any judgment in favor of either appellant against Brown, Bonnell & Co.

Appellants' claims were submitted to the Court upon their petition (record, p. 132); the answers (164 and 166), without any reply to the answers, or any proof in support of the petition.

Page 35, counsel says "the Court below refused to allow the issue thereby tendered to be heard on proof."

The Court made no such refusal in fact, nor does the record show any.

Appellants' case was not tried below, as if counsel had confidence in its merits.

CONCLUSION.

The former appeal of 1886 was with the design to give preference to the judgments confessed after this suit was commenced in November, 1883; and how this Court regarded it appears in the prior decision, 134 U. S. Rep., 535, wherein it was said the "contest" was

"With the evident intent to prevent the equality among creditors which the existing equitable proceedings would secure and give preference to certain creditors.

"For clearly it was the thought of the president of the corporation, himself the owner of a large majority of its stock, whose management had wrought it financial ruin, that after the setting aside of the equitable proceedings the lien of the confessed judgments would attach, and thus those favored creditors would be preferred."

The counsel for appellants dies hard—still he desires by fresh claims and by old claims to set aside these equitable proceedings with the specious request that the assets be handed over to a State receiver who does not claim them, with the evident design to then claim priority for his judgments so characterized, confessed before the commencement of the State suit, but after the commencement of this, and in the claim shadowed forth by him on page 34 that as to the State receiver the confessed judgments are prior liens.

CECIL D. HINE,
CHARLES C. BALDWIN,
For Appellees.

IN THE

Supreme Court of the United S[illegible]

OCTOBER TERM, 1890.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, AND
AMY G. AYER,
Appellants

vs.

WILLIAM McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, AND
CECIL D. HIME, TRUSTEES, ET AL.
Appellees

No. 1,[illegible]

MOTION TO ADVANCE.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, AND
AMY G. AYER,
Appellants

VS.

WILLIAM McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, AND
CECIL D. HINE, TRUSTEES, ET AL.
Appellees

No. 1,543.

MOTION TO ADVANCE.

And now come the appellees in the above entitled cause, and respectfully move the Court to advance the hearing of this cause, for the following reasons, to-wit:

FIRST. That this case has been once adjudicated by this Court upon its merits, at the October term, 1889, under the title of Brown, Bonnell & Co., appellants, vs. The Lake Superior Iron Co, et al., appellees, (U. S. Supreme Court Reports, Vol. 134, page 530).

SECOND. The pending appeal is from a decree of the Circuit Court confirming a Master's sale, made in execution of the decree of said Court, rendered in February, 1886, and affirmed by this Court April 7th, 1890, on said previous appeal.

Such appeal delays the distribution of the assets of an insolvent corporation amongst creditors, who have already been compelled to long await payment of their claims.

Such appeal also necessitates the maintenance in the Circuit Court of an expensive receivership, which has now continued for more than eight years; and the operation and management, by the Court, of an extensive manufacturing business; and, if not advanced, will result either in affirming or setting aside a sale of a manufacturing plant, several years after the date of the sale, and when the value and condition of the business will have largely changed.

And in connection with this motion, we beg to submit the following brief statement of facts.

This action was commenced in the Court below, February 20, 1883, by the The Lake Superior Iron Co., and others, against Brown, Bonnell & Co.—an insolvent corporation—not only in behalf of the complain-

ants, but also in behalf, as well, of all other creditors of Brown, Bonnell & Co., for the purpose of subjecting the property of the corporation to the payment of its debts. The property consisted chiefly of blast furnaces and rolling mills, for the manufacture of iron ; and pending the suit, a receiver was appointed to take charge of, and operate these works.

The creditors having, in compliance with the order of said Court, appeared and filed their claims, a decree for the sale of the iron works was rendered in said Court, February 23rd, 1886.

Appellant, The Leadville Coal Company, had, prior to this, filed its claim, and was included in this decree. Appellant, Charles S. Worden, had appeared in said action, as early as March 19th, 1884, but had not seen fit to file his claim, or to submit it to the Court for adjudication.

From that decree, Brown, Bonnell & Co. appealed to this Court, which appeal was heard at the October term, 1889, and the decree was affirmed April 7th, 1890.

In pursuance of the mandate of this Court an order of sale was issued, and said iron works were offered for sale, in exact accordance with the terms of said decree and mandate, and were bid in by William McCreery, Henry Tod, Charles C. Baldwin and Cecil D. Hine as Trustees for creditors, with claims aggregating $1,271,114.67 out of a total indebtedness of $1,320,-649.92.

On October 1st, 1890, said sale was confirmed by the Circuit Court, and the proceeds thereof ordered to be distributed in exact accordance with the decree heretofore affirmed by this Court.

From this decree of confirmation, said Leadville

Coal Company and said Charles S. Worden, in their capacity of creditors; and said Amy G. Ayer and George M. Ayer, in character of stockholders of Brown, Bonnell & Co., have prosecuted the pending appeal.

Charles C. Baldwin

Cecil D. Hill

Solicitors for Appellees.

IN THE

Supreme Court of the United States.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, and
AMY G. AYER,
Appellants.

vs.

WM. McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, and
CECIL D. HINE, et al.,
Appellees.

No. 1,543.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

Brief of Appellees on Motion to dismiss or affirm.

INDEX.

Statement of Facts, page 3.

Papers in nature of Pleadings, page 4.

Motion to Dismiss, Facts, page 5.

1. Decree is in Execution of former Decree and Mandate, page 5.

2. Appellants no interest in Appeal, page 5.

Because not injured by Decree, page 6.

Because no legal interest in Decree, page 6.

Synopsis of Objections to Confirmation, pages 7 and 8; and of Answers thereto, pages 8 and 9.

Motion to change the distribution ordered by previous Decree and Mandate, pages 9 and 19.

Objection claimed to Confirmation argued, page 9.

1. Appraisal claimed not to be in view of all the property, page 10.

2. Wick, Appraiser, nephew of a creditor, page 10.

3. Claimed another in employ of a creditor, page 11.

4. Appraisers ignore unfinished contracts, and 5, receiver had pending contracts for ore, page 12.

6. Inadequate price, page 12.

7. Announcement made of offer of sale by receiver, page 13.

8. That purchasing trustees had instituted suit against the Corporation, page 13.

9. Action abated by an order in a subsequent suit in the State Court.

1. State decree subject by its terms to this suit, page 14.
2. Subject by State Statute to this suit, pages 14 and 16.
3. Subject by rules of equity to this suit, page 16.
4 and 5. Other reasons still why the decree did not abate, pages 17 and 18.

10. Fraud claimed but no evidence, page 18.

Conclusion, pages 21 and 22.

Opinion of Judge Ricks concurred in by Judge Jackson. (See Record, pages 126–134.)

STATEMENT.

This is an equity suit commenced in the Circuit Court at Cleveland, February 21, 1883 (Rec. 1), by the Lake Superior Iron Company et al., creditors, against Brown, Bonnell & Co. (a corporation having large and extensive iron works.) A receiver was then appointed, and such proceedings were had that in February, 1886, that Court made a decree (Rec 68) ascertaining the claim of each creditor (176 in number) and directing that the plant be sold by a special Master and the personal property by the receiver, to pay Wilcox & Scaife (a mechanic's lien), and (Rec. 79) to pay the other creditors *pro rata*, except charging against two a preference gotten by them elsewhere.

This action has already been before this Court by appeal by one of the creditors (opinion of Mr. Justice Field, Florence Mining Co. vs. Brown, receiver, 124 U. S. Rep. 385), and again the general decree mentioned was appealed from by the corporation of Brown, Bonnell & Co. (Brown, Bonnell & Co. vs. Lake Superior Iron Company et al., No. 227, October Term, 1889), and affirmed by this Court in April, 1890 (reported 134 U. S Rep. p. 530), and a mandate sent to the Court below, directing it to carry said decree into execution.

In exact accordance with that mandate, an order of sale was issued to W. F. Goodspeed, the special Master named in the decree, to sell the plant. It was appraised at $962,137.00, and was bid off by William McCreery, Henry Tod, Charles C. Baldwin, and Cecil D. Hine, as trustees representing very nearly all the creditors (over 96 per cent).

The Court confirmed the sale, and ordered the distribution of the proceeds in exact accordance with the previous decree and mandate of this Court.

To this confirmation and order, the counsel for appellants interposed various objections, calculated to delay the closing of the trust, and to the decree of confirmation of the sale and distribution of its proceeds the appeal was taken.

The papers in the nature of pleadings or motions filed since the decree and mandate of this court are:

1. 31 May, 1890, a "petition" of the Leadville Coal Company and Charles S. Worden to declare the suit abated (Record p. 82.)

2. 22 Aug., 1890, exceptions by same to confirmation of sale (Record p. 93.)

3. Same date, similar exceptions by George M. Ayer and Amy G. Ayer claiming to be stockholders in Brown, Bonnell & Co. (Record p. 99.)

4. Motion to strike the exceptions from the files. (Record page 123.) Aug. 28, 1890.

5. 22 Sept., 1890. "Petition" by the Leadville Coal Company and Charles S. Worden to give them priority in distribution on judgments confessed since commencement of the suit. (Record p. 132.)

6. Answer of complainants et al. to "petition." (Record p. 164).

7. Answer of sundry creditors to same. (Record p. 164.)

8. Petition of Henry Crawford for an allowance for his services. (Record p. 167).

The appellants, though subject to the same general objections, are not alike in the facts of their position; and it will tend to clearness and brevity to consider their respective positions separately.

The record is of some length, in fact embodying selected parts of the original record, counsel for appellants desiring to open the decree of 1886, and the record embodying also the whole record in two cases in the State Courts of Ohio; but the only parts of these records necessary to this hearing are the judgments or decrees therein.

FIRST AS TO MOTION TO DISMISS.

In August, 1890, the Leadville Coal Company and Charles S. Worden, styling themselves creditors of Brown, Bonnell & Co., filed exceptions to the sale. (Rec. 93.)

And on the same day George M. Ayer and Amy G. Ayer, claiming respectively to be stockholders in the corporation

of Brown, Bonnell & Co., joined in the exceptions. (Rec. 99.)

On the 22nd of September, 1890, the Leadville Coal Company and Charles S. Worden filed a "petition" (Rec. 132) asserting judgments by confession in their favor in the Court of Common Pleas of Mahoning County, Ohio, 22 November, 1883 (nine months after the commencement of this action), which they claimed to be liens on the property then in possession of the receiver, and entitled to priority over other creditors.

(As to the circumstances and character of these judgments, see the terse language of Mr. Justice Brewer, 134 U. S. Rep., 534 and 535).

The Leadville Coal Company and Charles S. Worden had also filed, 23 May, 1890 (Rec. 81), a suggestion of the "dissolution" of the corporation of Brown, Bonnell & Co., and asked that the Court order the property which had been in its possession to be handed over to a receiver appointed by the State Court, on the grounds that this suit had abated.

As this was the prominent ground of objection to the sale, with the passing remark that the decree relied on as ground of abatement (Rec. p. 107) was expressly in the terms subject to the present suit, and that the Statutes of Ohio (R. S. §§ 5679, 5680 and 5684) expressly provide that no suit pending against the corporation shall abate, we pass this for the present, to the question of dismissal of the appeal.

WE SAY:

1. The decree appealed from was in pursuance of and in exact accordance with the former decree and mandate of this Court (Record 68, 79, 81, 170-1) and in execution thereof and if there were no color to dismiss "should be disposed of summarily." Chanute City vs. Trader. 132 U. S. Rep. 210 (Mandamus).

2. If the Leadville Coal Company and Charles S. Worden were creditors and to be recognized as such,

This appeal is against their interest if any they have.

Although the exceptions (Rec. p. 94) state a sacrifice of the property as the ground of exception, no evidence was introduced to support that claim. The sole evidence other than record evidence offered by appellants, was the affidavit of Mr. Crawford himself (Rec. p. 100), which does not state that. See Opinion, page 131.

A party cannot appeal from a decree which does not injuriously affect him. Crawshay vs. Soutter, 6 Wall, 739.

3. Appellants had no interest in the sale or its proceeds, because,

FIRST. *The Leadville Coal Company and Charles S. Worden were not creditors at the time of their application.*

The Leadville Coal Company had been a creditor, and was included in the decree. (Rec. p. 69, Claim No. 25.)

It has had the same president and attorney as Brown, Bonnell & Co. A judgment was confessed to Charles S. Worden (the other appellant) for $18,680 (Rec. p. 146); in 1884 a receiver was appointed on his petition (case occupies pp. 135 to 164 of the Record); page 163 it appears that the receiver of the Leadville Coal Company sold its claim in this cause to Edward E. Ayer. So that the claim of the Leadville Coal Company passed to a receiver appointed by the State Court, and from that receiver to Edward E. Ayer, long before the Leadville Coal Company filed "the petition" or exceptions referred to.

SECOND. *Is Charles S. Worden a creditor?*

He is not in the decree and mandate of this Court. (Schedule Rec. 69).

It is not denied that in November, 1883, he recovered by confession in the Mahoning Common Pleas a judgment against Brown, Bonnell & Co., after the present suit (Rec. 132 and 165). It is claimed to be without consideration, fraudulent and void. (Rec. 165.)

His was one of the judgments mentioned by this Court. (134 U. S. 532 and 535.) (Schedule p. 46 Rec.)

He appeared before the decree on the merits in this case to contest the creditors in the interest of Mr. Ayer. (March 1, 1884, Rec. p. 40; answer to intervening petition; and May 2, 1885, exceptions to report, Rec. p. 66.) But of all the creditors in the confessed judgments, he alone never ventured before decree to ask the allowance of his claim before the Court or Master. Nor could this have been an oversight or mistake, *for his precise attention was called to it* by a motion to strike his name from his pleadings for that very reason. (Additional Record in Cause 227, October Term, 1889, pages 219 and 218.)

THIRD. *George M. Ayer and Amy G. Ayer were not authorized to appear and object to the confirmation.*

They were simply stockholders (Rec. p. 99) appearing after decree to object to the sale of the assets of the corporation, in a suit where the corporation was still a party. Nor was their appearance instead of that of the corporation waived, for it was *expressly objected to.* Motion by appellees, page 123, filed 28 August, 1890.

Their case was much weaker than Taylor vs. Holmes, 127 U. S. Sup. Ct. Rep. 489, where the stockholders undertook to appear in suit for a corporation after dissolution. For not only was "there no reason why the suit should be brought by the two stockholders instead of the corporation itself," (see as to New York Statute p. 492) but in the case at bar the *corporation* was actually a party.

IF THE COURT SEE FIT TO CONSIDER THE OBJECTIONL OF APPELLANTS ON THEIR MERITS, THE OBJECTIONS TO THE CONFIRMATION OR ORDER ARE: (Rec. p. 93.)

1. That the appraisal was not made on actual view. Not true; see post, page 10.

2. Appraiser C. B. Wick was nephew to one of the 176 creditors. Not a disqualification in Ohio; see post, pages 10 and 11.

3. Another, Neilson, was in the employ of a creditor. Not true; see post, page 11.

4 and 5. That the purchasers would be entitled to $100,000 advanced by receiver on contracts, which were not appraised. Not true, page 12.

Receiver did not sell his personalty, and the claim of appellants is based on an entire misinterpretation of the decree, nor does the confirmation direct such interest to be conveyed to purchasers.

6. Grossly inadequate price. No proof and not so. See post, page 12.

7. Receiver gave notice at master's sale that he would sell to the purchaser a small corner piece bought by him. Nothing to do with this confirmation. See post, page 13.

8. Purchasing trustees caused to be instituted some months before they had an existence a suit in State Court to dissolve the corporation.

What if they did? But they did not. Post, page 13.

Close of 8th and

9. Suit abated on decree of the State Court July, 1889, dissolving the corporation.

Answers:

FIRST. *The decree in State Court was in terms subject to the U. S. Court suit. Post, page* 14.

SECOND. *The State suit was under Ohio R. S.* 5673, *and is governed by that and other sections contained in Chapter* 5, *Division* 7, *Title* 1 §§ 5651-5688, *relating to dissolution of corporations,* 5673, *and* 5679. *Sections* 5680 *and* 5684 *provide that no suit pending against the corporation shall abate but may be continued in the name of the corporation. Post, pages* 14-16.

THIRD. *Outside of express statute, suits to enforce creditors' liens on corporation assets do not abate by dissolution of the corporation. Post, page* 16.

FOURTH. *Especially when the assets long before the proceedings in State Court commenced were in possession of the Court.*

FIFTH. *The objection, if good, is too late. Post, page* 17.

SIXTH. *And never good in Ohio even as to the individual after decree to sell. Post, page* 18.

10. The decree of sale includes five coal leases to R. J. Wick, trustee, and he not a party.

FIRST. He was and is a party. Rec. p. 8. Supplemental bill. Subpœna served case No. 227, October Term, 1889. Additional record p. 11. Demurrer by him p. 29. Same record.

SECOND. This objection, if good, should have been taken on previous appeal to that decree.

THIRD. Would only be as to R. J. Wick and not to strangers.

FOURTH. It is not good in law. Opinion Record p. 131.

MOTION TO CHANGE DISTRIBUTION.

On application to change the application of proceeds of sale: (Rec. p. 132.)

The Leadville Coal Company and Charles S. Worden set up respectively judgments by confession in State Court in November, 1883, claimed to be liens superior to the decree in this suit, commenced in February, 1883.

This claim cannot be good in law; and if so, should have been made before the decree and mandate; and in fact the status of these judgments was determined by this Court on appeal on merits. See 134 U. S. Rep. 535.

AN OBJECTION to the confirmation named by the Ayers stockholders was that the agreement under which trustees were appointed was void against stockholders. (Rec. p. 99.)

This, though named in the motion, was not presented either in proof or argument below, and wisely not. Post, page 18.

OBJECTIONS TO THE CONFIRMATION.

These objections, so far as they were presented by counsel in a very long oral argument in Court below, are discussed in the opinion by Judge Ricks, concurred in by Judge Jackson, Record pp. 126-132. The objections *seriatim* appear in the Record, pages 93-99, and are claimed to be supported by the affidavit of Henry Crawford, pp. 100-101.

The decree (p. 80) directed the property to be appraised, advertised and sold as upon judgments of law.

The R. S. of Ohio § 5389 provide:

"When execution is levied upon lands or tenements the officer who makes the levy shall call an inquest of three disinterested freeholders who shall be residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon actual view, and such freeholders shall forthwith return to such officer under their hands an estimate of the real value of the property in money."

First Objection. That the appraisal was not made on actual view.

Supported solely by the hearsay evidence of Mr. Crawford, p. 100, that he talked with Caleb B. Wick, one of the appraisers, and was informed that they viewed only the properties in Youngstown and Strothers.

We suppose that even on affidavits, evidence clearly hearsay is no evidence. The return of the Master (p. 84) shows he caused the premises ordered sold to be duly appraised, and that the appraisal was deposited in the "office of the clerk of said Court."

So that opposed to the hearsay affidavit of Mr. Crawford is the return of the special Master and the return on oath of the appraisers.

The property claimed *not to be viewed* was "5 leases of coal land in Butler County, Penn." (p. 79 Record.)

These were simply rights to mine, and, never exercised, because of no value.

So the Court concluded. Opinion p. 131.

The statutes of Ohio require no appraisal of personalty; but in this case all was considered by the appraisers, though it was little matter whether these options, not claimed to be of any value, were included or not.

Second Objection. It was said that Caleb B. Wick was nearly related and akin to several creditors (p. 93). The relationship (Record p. 100 and 124 and 125) is as follows:

Wick Brothers & Co., having a claim of $29,208.51 (p. 70, No. 99) is composed of cousins of Caleb B. Wick.

It is correctly stated in Mr. Crawford's affidavit that Caleb B. Wick is a nephew of Henry Wick.

Henry Wick has no personal claim, but Henry Wick & Co. (p. 70, No. 97) have a claim of $11.790.28. There is no evidence, but assuming that Henry Wick is a partner in the firm, and even that he owns the whole claim, his proportion of the assets is very small. The debts in the schedule (June, 1884) were $1,320,000.00, so that at $12,000.00 Henry Wick & Co. would have $\frac{1}{110}$ of the proceeds.

The appraiser's interest as a nephew of the man who could not possibly get over $\frac{1}{110}$ of the proceeds was not very large. But there was produced below a case (1 Conn. 294) holding that the nephew by marriage was not "*indifferent.*"

The language as to requirement of appraisers in Ohio is "*disinterested.*" R. S. Ohio Sec. 5379. Ante p. 10.

A want of interest—what interest has Caleb B. Wick?

The Conn. case was under a special statute and is explained in Kinsman vs. Warner, 113 Mass. 347, where the subject is discussed by Chief Justice Gray, and the Conn. case is shown to be under a special statute and disapproved of for general use. No Ohio case is cited, and that the Supreme Court of Ohio is not too easily frightened by the word "interest" is shown by Thompson vs. Love, (42 O. St. Rep. p. 72) and Goodwin vs. Commissioners (41 O. St. 400), and see Opinion in Record p. 129.

THIRD OBJECTION. That James Neilson, an appraiser, was in the employ of C. B. Andrews, one of the creditors.

No C. B. Andrews is a creditor, but supposing exceptor and affiant (pp. 94 and 100) means that Neilson was in the employ of C. H. Andrews—who in fact was one of the partners of Andrews and Hitchcock, creditors (Rec. p. 70, No. 63), we say disapproved.

Mr. Crawford's affidavit is on hearsay—(p. 100) and that Neilson *is*, 27 Aug. 1890 (the appraisal was made in June), and if we read *was* in June, 1890—it is disapproved by the two affidavits on pages 124 and 125.

FOURTH OBJECTION. That the appraisers ignored unfinished contracts of the receiver which were of the value of $200,000.00 which were sold in connection with the premises. And,

FIFTH OBJECTION. That at the time of the sale the receiver had pending contracts for the delivery to him of ore for which he had paid $100,000.00, the right to receive which would pass to the purchaser.

Untrue throughout.

Proof—p. 100 (affidavit of Crawford) hearsay that Receiver Brown told him he had paid $100,000.00 on ore contracts. The legal foundation of the objection is an attempted misconstruction of the decree under which sale was made (Record p. 80 side paging, 130,) that the receiver may sell the personalty (which is not yet done), and next that the purchaser may be required to give bond in the sum of $20,000 to secure the receiver against liability in unfinished contracts in carrying on the business.

If that language gives the purchasers of the plant title to the $100,000.00 claimed to have been paid by the receiver as advance payments for ore, it is news to the purchasers, the receiver and the Court, who gave no title to it in the decree appealed from to confirm the sale and to make a deed.

SIXTH OBJECTION. Sale for grossly inadequate prices as shown by the report by the receiver.

Untrue in fact, and no such report.

We suppose the counsel means the statement filed in February, 1883, seven years before the sale (Record p. 5), and which had no legal value on this question, or as to value, even when filed.

It was simply an inventory without any ordered or legal appraisal, undertaken to be used by appellants on the previous hearing (Case 227, Oct. term, 1889, Rec. p. 7) to show that the corporation was solvent. It was disregarded then and itself says at footing: "Plant and other assets at nominal

values." Nor does its own "nominal value" increase on examination.

See Opinion, Record p. 131.

The plant was appraised at $962,137.00 and sold for $700,000.00. Two-thirds would have been sufficient under the decree and mandate of this Court. And as to inadequacy see the opinion of Mr. Justice Bradley, 117 U. S. Rep. 192.

SEVENTH OBJECTION. That at the sale the receiver announced that the purchaser at the sale might buy of him a small piece of land bought by him under order of Court to fill a corner. Exceptions, page 94 and affidavit, p. 100.

The decree appealed from does not give purchasers that piece of land, nor have purchasers got it, but how the question of their bid to a master under the decree and mandate of the Supreme Court of the United States turns on another person who is receiver giving them notice that he will sell them another piece, purchasers cannot see. A decree of the Supreme Court is not so easily frustrated.

EIGHTH OBJECTION. That the purchasers under this decree are trustees and committee for the creditors of Brown, Bonnell & Co., and that on January 11, 1884, they caused an action to be instituted in the Court of Common Pleas of Mahoning County, Ohio, to cause said corporation of Brown, Bonnell & Co. to be dissolved, and a decree was entered for such dissolution July 12, 1889, appointing a receiver, &c.

It is admitted that the purchasers are trustees and committee for creditors—and appointed under the contract (Record pp. 25-27) which was not made until 29 April, 1884 (Record 97), and they could not and they did not institute a suit commenced January 11, 1884, 4½ months before, nor were they ever parties to said suit or interested in it. It is little matter whether they were or not, and with the latter part of this exception we pass to

NINTH OBJECTION. "That this action abated on the dissolution of such corporation by (Rec. p. 95) judicial decree and

said Taylor, the receiver (in State court) who now under the statute is vested with the title to all the corporate assets, has not been made a party to this suit in any way."

This was claimed on argument below to be the main reliance of the exceptors (appellants) and occupied much time.

Exceptors had abundance of cases to show that ordinarily cases at law pending against a corporation abated at dissolution. That was all they did have and we admit it all. There are three reasons why the suit and decree already made on the merits did not abate.

1. *The Decree of the State Court was especially made subject by its terms* (*Rec.* 107) *to the present suit.*

The proceedings for dissolution relied on are in the Record, pages 101-123. The decree is on page 106, July 12, 1889, and the corporation is dissolved, and the Court appoint H. K. Taylor receiver, but (p. 107) "inasmuch as it appears to the Court that the estate and effects of said Brown, Bonnell & Co. are at the present time in the hands of a receiver appointed by and acting under the orders of the Circuit Court of the United States for the Northern District of Ohio, it is ordered that the receiver hereby appointed shall not interfere with the posession of the receiver appointed by said Federal Court of the effects and assets of said corporation."

The State Court had evidently no intention to interfere with the progress of matters in the Courts of the United States by its decree but put an end to further mischief in the use of a corporation where its stock was only of value to obstruct creditors or oblige them to buy off opposition.

2. *The Statute of Ohio under which the dissolution was decreed says it shall continue in the name of the corporation.* Ohio R. S. 5679 et al.

The proceedings in the State Court was by solvent stockholders (Dan P. Eells et al. p. 107), owning 1-5 of the stock ($300,000).

The suit for dissolution (Rec. p. 107) was commenced January 11, 1884, and was under Revised Statutes of Ohio of 1880, Title 1, Division 7, Chapter 5, Sections 5651-5688.

The petition was filed under Sec. 5673, by one-fifth of the stockholders.

Ohio R. S. 5679 provides:

"*No action pending in any Court* in favor of or *against any corporation* shall be discontinued or abate by the dissolution of the corporation, whether the dissolution occur by the expiration of its charter or otherwise, but *all such actions may be prosecuted to final judgment by the creditors*, assignees, receivers or trustees having the legal charge of the assets of the corporation *in its corporate name.*"

How completely, even at law, an action does not abate under such proceedings is shown by R. S. 5680. "Upon *all judgments* in favor of or *against* any such corporation, whether such judgments exist at the time of the dissolution or are *obtained afterward in actions pending at the time of the dissolution*, execution may be had, and satisfaction or performance of the same enforced by the *creditors*, assignees, receivers or trustees having the legal charge of the assets of the dissolved corporation, *in the corporate name of the dissolved corporation.*"

And R. S. 5684 provides:

"Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued, or which, but for the dissolution, would have accrued against it, in the same manner, and with the like effect, as if it were not dissolved; and all process by which an action is instituted against such corporation may be served by the sheriff or other proper officer, by delivering to any one of the assignees, trustees, receivers or persons having charge of its assets a copy thereof or by leaving such copy at the residence of any such assignee, trustee, receiver or person."

And in the same general line are §§ 5683, 5685 and 5686.

It was argued at length below that as the petition was filed under R. S. 5673, first passed in 72 O. L. 67, that R. S. 5679, first passed in 41 O. L. 1, did not apply. Waiving the proposition that two statutes passed upon the same subject matter are to be construed together, counsel resident in

Illinois, and therefore excusable, seem not to be aware that the Ohio Revised Statutes of 1880 were passed as a body, and the prior acts were repealed.

(R. S. 7348, and repeals prior.) Still it would seem as if this chapter (V. Dissolution of Corporations §§ 5651, 5688), might have itself shown that these sections were akin.

3. *But aside from statute, though actions at law against a corporation to recover a money judgment would abate, as was amply shown by counsel for appellants and undisputed, the case would be different in equity, and especially in a suit quasi in rem.*

It would be monstrous if the United States Court, having in February, 1883, taken charge of property to administer, should in 1890, and after the final decree, be deprived of its jurisdiction accruing seven years before, and be obliged to ignominiously deliver over the trust assets to the subsequent State Court.

To whom should these assets go but to the persons to whom they belong, and to whom is the U. S. Court, as trustee, to deliver the property?

The authorities give but one answer, and the authorities are so unanimous that we hope to be pardoned for citing text-books where they are collected, instead of cases.

Morawetz on Corporations, 1031:

"All *legal* remedies to enforce debts due by or to a corporation are necessarily extinguished." The italics are his.

See further 1032-1034, and

Section 1035. "It is well settled that the equitable rights of the creditors of a corporation survive its dissolution although their remedy at law is extinguished and that a Court of Chancery will furnish a remedy to protect and enforce their equitable rights against any assets belonging to the company at the time of the dissolution, &c., &c."

More than all, the cases cited by counsel for appellants below are cited by Mr. Morawetz under section 1031, and see Curran vs. State of Arkansas, 15 Howard U. S. 304, quoted by Morawetz, sec. 1035.

To the point that *suits at law* against a corporation abate by its dissolution, counsel for appellants needed no other

authority than National Bank vs. Colby, 21 Wallace, where, page 615, Mr. Justice Field says: "This is a rule with respect to all corporations whose chartered existence has come to an end, either by lapse of time or decree of forfeiture, *unless by statute pending suits be allowed to proceed to judgment notwithstanding such dissolution.*"

Beach on Receivers, Sec. 15:

"When a receiver has been appointed by one Court, and has obtained possession of the property or fund over which he was appointed, he cannot be in any manner interfered with by a receiver subsequently appointed or *by any proceedings whatever in any other action brought in any other Court.* The Court which first appoints a receiver has the sole disposition of the fund or property received by him as such, and is bound in the exercise of his judicial powers to make administration of it, &c." And see Secs. 20 and 21, for cases similar in State and Federal Courts.

One of the cases cited by Beach is Pugh vs. Brown, 19 Ohio 202, laying down the rule that the last Court should dismiss the bill. The dissolution case was brought by minority stockholders just after Ayer had confessed the judgments, and the counsel and Court no doubt thought it was prudent to prevent the irresponsible president, Herbert C. Ayer, controlling the corporation, from trifling any longer with his power. See case at bar 134 U. S. Rep., p. 530. And see Platte vs. Archer, 9 Blatchford, 559, 568-570, as to cases gainst a corporation *in rem* or *quasi in rem.*

As the statute and equity are both clear that the suit did not abate, it is perhaps superfluous to give any more reasons; but there are still two more.

4. In *ex parte* Story vs. Story, 12 Peters 339, the case supports the syllabus: "An equity cause having been heard in this Court on Appeal and its merits finally decided and a mandate sent to the Court below requiring it to execute the decree of this Court, the Court below rightly refused to permit the defendant to bring upon the record facts showing

that the suit was abated before the appeal (here during the appeal), and that the executor of the complainants ought not to have been allowed to prosecute the appeal of this Court." The case is fully supported where cited. 11 Wall. 674; 17 Wall. 283.

5. Perhaps the general law of Ohio as to abatement of actions in equity is of no interest here.

That Court, however, as to natural persons, decided in the Bigelow vs. Renker, 25 O. St. 543, that real estate levied on during the lifetime of the judgment debtor may be sold under the levy after his death, without making his representatives parties.

But the same law is laid down in Taylor vs. Miller, 13 Howard U. S. 287, Opinion 293.

And the Supreme Court of Ohio, in 24 O. St. 445, where there had been a decree of sale and the debtor died thereafter, held it was not necessary to revive the suit.

THERE IS ONE OBJECTION TO THE CONFIRMATION,

Stated in the exceptions of George M. Ayer and Amy G. Ayer, which was not stated or argued by counsel below:

It is said that the agreement under which the trustees were chosen is void as in fraud of stockholders.

If this objection is to be considered at all, it may be said:

That there is no evidence offered of any fraud or hardship in fact in the agreement. This is not an agreement intended for stifling competition, or lowering the price. Indeed, it was made at a time when, owing to the obstructive skill of the counsel for appellants, it seemed necessary for creditors to combine for protection, and be quick about it. It was signed by many more than appear on Mr. Crawford's copy (see decree below, p. 170) and indeed by *very nearly all* the creditors. It was signed by some creditors who were also stockholders who had already been sued on

their statutory liability, and all of whom had debts for money loaned or paid out, and a mortgage on the whole plant to secure them.

These stockholders holding debts to $243,000.00 and stock to $300,000.00, agreed to give up their preference by mortgage lien, and to pay in addition the sum of $200,000.00 to be released.

They did not agree to this with delight, nor do they now so view it; and possibly, if the Ayers wish to participate, they may out of Court get the chance, which we hope will be edcided to have nothing to do with the confirming of this sale.

It is not claimed that this agreement hurt any creditors, or the corporation, or that the Ayers or any other stockholders ever desired to join in it or were refused. There can be no doubt about the good faith of this agreement, or that it was to prevent a sacrifice. How it hurt any stockholder than those who, being creditors, thought best to and did sign it, we do not see.

Such agreements are valid. Wicker vs. Hoppack, 6 Wallace, 97, and cases there; also the late case in 101 Penn. State 576, Penn. Transportation Company's Appeal.

EVEN THE INGENUITY OF COUNSEL FOR APPELLANTS HAS MADE BUT ONE MORE QUESTION.

By motion filed September 22, 1890 (Record, p. 132), the Leadville Coal Company and Charles S. Worden claim:

1. To have held debts (not particularly described) against Brown, Bonnell & Co. since the beginning of suit (21 February, 1883), and that on November 22, 1883, the Leadville Coal Company recovered a judgment for $11,974.00 and Worden for $17,383.00, both in force.

2. Brown, Bonnell & Co. are insolvent to the extent of several hundred thousand dollars.

3. No dividend yet made.

4. Name a large amount of claims said not to be creditors at commencement of suit, they then holding paper *endorsed* by Brown, Bonnell & Co. not then due nor becoming matured until after suit was commenced—that creditors did not use due diligence to hold endorser.

5. As the corporation is dissolved, they have no right to share.

6. Petitioners' judgments are liens on real estate.

They ask that these claims may be rejected, that their own judgments may be paid in full, or at least *pro rata*.

To this answer was filed (Record, 164) denying Worden having an existing claim at beginning of suit, and the good faith of the judgments, alleging that the claim of the Leadville Coal Company was that already decreed to it, and denying all else.

This is an attempt pure and simple to re-litigate matters determined and settled by the former decree and mandate of this Court.

See statement of facts, *ante* page 3.

Their judgments confessed and obtained on November 22, 1883, cannot be a lien superior to that of the general creditors under petition of February, 1883, and no authority is necessary save the previous opinion in this case. 134 U. S. Rep. 530.

The necessity to appellants for attacking the claims named on page 133, is that they were in the prior decree and mandate. The same attack was made in the former hearing before this Court in March, 1890, and was argued by the same counsel in his brief, pp. 50 and 51. (Cause No. 227, October term, 1889.)

The same objection applies to any further claim by the petitioners to share in the proceeds. Both were parties. (See *ante* pages 6 and 7). The Leadville Coal Company already had a decree (No. 25, p. 69), and Worden had ample chance, if his claim had been *bona fide*. He sets it up now, relying on his confessed judgment of November, 1883, and does not even

set forth what his claim was, if any, at the commencement of this suit.

We do not need to remind the Court what may be heard on second appeals.

The syllabus in 96 U. S. Sup. Ct. 461, "The Court will consider on a second appeal *only* the proceedings subsequent to its mandate. The re-examination cannot extend to anything decided on the first appeal," has many cases with it, of both error and appeal. Since the 96th in appeal, 108 U. S. Rep. 92, and the last case of appeal before it on this qestion is Supervisor vs. Kennicott, 94 U. S. Rep. 498, where many prior cases are cited.

SUMMARY.

In conclusion, we submit that not only are the objections taken to the confirmation of the sale technical and frivolous, but also that the history of this protracted litigation shows very clearly that this appeal is for delay only, and is a part of a scheme of delay devised by ingenious counsel.

At the very threshold of this litigation Brown, Bonnell & Co. confessed its insolvency, and practically invited the Court to assume control of its assets, and administer upon them for the benefit of its creditors; and to do this lest some creditors should gain advantage over others.

Not until November 24, 1883, nine months after the Court had thus taken jurisdiction of the property, was any objection raised; and then Brown, Bonnell & Co., by *Mr. Henry Crawford, solicitor*, filed its plea praying for the dismissal of the bill and alleging as a reason that *it* had paid the judgment claim upon which, in part, the bill was based.

This plea was surely not made by a corporation which had been only *temporarily* embarrassed and had recovered its footing so as to be in a position to resume business, for it appears that only two days before the filing of this very plea Brown, Bonnell & Co., by Mr. Henry Crawford, its solicitor, had confessed judgments in the State Courts aggre-

gating over five hundred and seventy thousand dollars, and in the month following, judgments amounting to nearly one hundred and fifty thousand dollars more.

And furthermore, it now comes to light, through the petition filed by Mr. Henry Crawford in his own behalf, on September 22, 1890 (page 167 printed record), that Brown, Bonnell & Co. did not pay even the small judgment mentioned in the plea of November 24, 1883, but that Mr. Crawford himself paid it.

And now, after this case has been already once heard by this Court upon an appeal taken by this same counsel, upon a question which the learned Judge announcing the opinion of the Court was pleased to characterize as *an unsubstantial technicality*, and after the creditors of the corporation, the justness of whose claims it has never occurred to this corporation to call in question, have now been compelled to wait eight years in vain for the payment even of a dividend, this case is again brought into this Court by the same counsel.

The motions and petitions are signed only by the same counsel; the only sworn evidence is the affidavit of the same counsel; the bond for appeal bears no handwriting but that of the one Ayer and his own and he is sole surety. And on page 167 is an application by him (not appealed) for pay for his services *in behalf of creditors* from a fund said by him (p. 133) to be largely insufficient to pay them.

All the objections are purely technical to a sale made in exact pursuance of the mandate of this Court.

We submit that the whole appeal is plainly for the vexatious delay.

We do not expect it but, should there appear to be in brief of counsel of appellants any assertion or objection not herein clearly answered, appellees ask the privilege of further brief in reply or brief oral argument.

CECIL D. HINE,
CHARLES C. BALDWIN,
Solicitors for Appellees.

Office Supreme Court U. S.
FILED,
MAR 9 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, and
AMY G. AYER,
Appellants.

vs.

WM. McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, and
CECIL D. HINE, et al.,
Appellees.

No. 1,543.

Motion by Appellees to dismiss the appeal, or, if that is refused, to affirm the decree.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE LEADVILLE COAL COMPANY,
CHARLES S. WORDEN,
GEORGE M. AYER, and
AMY G. AYER,
Appellants.

vs.

WM. McCREERY,
HENRY TOD,
CHARLES C. BALDWIN, and
CECIL D. HINE, et al.,
Appellees.

No. 1,543.

Motion by Appellees to dismiss the appeal, or, if that is refused, to affirm the decree.

STATEMENT OF FACTS UNDER RULE 6.

The decree appealed from is one confirming a sale of a rolling mill plant and distributing its proceeds among creditors.

In a suit in equity by creditors against the corporation of Brown, Bonnell & Co., commenced February, 1883, the Circuit Court, in February, 1886, made a decree fixing the status of creditors and directing among other things the sale of the plant to apply upon their claims, the plant being since commencement of suit and now in the possession of its receiver. This Court at its October term, 1889, (April, 1890,) affirmed that decree and sent a mandate to the Circuit Court to carry it into execution. (Brown, Bonnell & Co., vs. The Lake Superior Iron Company et al., No. 227-134 U. S. Supreme Court Rep. 530.)

Accordingly an order of sale issued, upon which the plant was sold to Wm. McCreery and others, as trustees, for creditors.

The Leadville Coal Company and Charles S. Worden, claiming (but denied) to be creditors, and George M. Ayer and Amy G. Ayer, claiming to be stockholders (and appearing under objection), filed exceptions to the sale, and the first two named, who were parties before the former appeal, also claimed to change the rule of distribution in their favor, claiming priority by virtue of two judgments confessed in a State Court since the commencement of the suit in the United States Court. They also filed in abatement a suggestion of the dissolution of the corporation in July, 1889, in the State Court, but the decree relied upon, by its own express terms, was subject to the present suit and, by the express terms of the State statute under which it was made, was subject to the continuance of any pending suit against the corporation in its name.

This was also claimed as the main exception to the confirmation of sale.

The Leadville Coal Company and Charles S. Worden were not creditors on this distribution for reasons further stated in the brief.

The Court below affirmed the sale and ordered the distribution of its proceeds in exact accordance with the former decree and the mandate of this Court.

MOTION.

The Appellees, appearing by their solicitors, respectfully move the Court to dismiss the appeal for the following reasons:

1st. That said sale and distribution are strictly in pursuance of and in accordance with the previous decree and mandate of this Court, and in execution thereof.

2nd. That Appellants suffer no injury, as the sale was for a fair and full price, nor is there any evidence to the contrary.

3rd. That none of said appellants are creditors entitled out of the proceeds of said sale, nor had nor have any of them the right to appear and contest the confirmation of said sale, nor any interest therein.

4th. That the right claimed by the Leadville Coal Company and Charles S. Worden to change the order of distribution is barred by the previous decree and mandate of this Court, and is not the subject of a second appeal.

Should the Court refuse to dismiss the appeal the appellees move to affirm the decree appealed from on the ground

1st. That the sale and order of distribution attacked are in execution of and in pursuance of the previous decree and mandate of this Court and are clearly right in law and fact.

2nd. That the objections thereto are frivolous and for delay merely.

CECIL D. HINE,
CHARLES C. BALDWIN,
Solicitors for Appellees.

DEC 12 18
JAMES. H. McKENNEY
CLERK

Supreme Court of the United States.

No. 999.

OCTOBER TERM, 1891.

THE LEADVILLE COAL COMPANY ET AL.,

Appellants,

VS.

WILLIAM McCREERY ET AL., TRUSTEES,

Appellees.

Motion to Modify Decree and for Mandate.

CHARLES C. BALDWIN AND
CECIL D. HINE,
Solicitors for Appellees.

THE VINDICATOR PRINTING CO., YOUNGSTOWN, O.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE LEADVILLE COAL COMPANY, CHARLES S. WORDEN, GEORGE M. AYER AND AMY G. AYER,
Appellants,
vs.
WILLIAM McCREERY, HENRY TOD, CHARLES C. BALDWIN AND CECIL D. HINE, TRUSTEES, ET AL,
Appellees.

NO. 969.

MOTION TO MODIFY DECREE OF CONFIRMATION, AND FOR MANDATE.

And now come Henry Tod, Charles C. Baldwin and Cecil D. Hine, appellees in the above entitled cause, and having heretofore orally suggested to the Court the death of William McCreery, one of the appellees herein, now suggest the same in writing, and respectfully move the Court, that, in

its order affirming the decree of the court below, it so modify said decree, as to direct the Special Master Commissioner to execute and deliver the deed, called for by said decree, to said Henry Tod, Charles C. Baldwin and Cecil D. Hine, Trustees, and their survivors and assigns, instead of to said William McCreery, Henry Tod, Charles C. Baldwin and Cecil D. Hine, as provided in the said decree of the court below. And for a ground of this motion, said appellees say, that said William McCreery died since this appeal was taken, to-wit: on the 16th day of September, 1891, (see the affidavit of James R. McCreery, filed herewith).

That the deed, directed to be made by the decree of confirmation, was never in fact made or delivered,—supersedeas bond having been given (see affidavit of Cecil D. Hine filed herewith, also supersedeas bond, page 172 of the printed record,): and said William McCreery had no personal interest in the purchase made at the Master's sale, but acted solely in his capacity of co-trustee with the appellees, who now make this motion (see Trust Agreement, under which Trustees acted in bidding in the property at Master's sale, pages 95 to 99 of printed record.)

And said appellees further move the Court to direct the issuance of a mandate forthwith, to the court below, commanding the due execution of the decree of said court, as affirmed, or as modified and affirmed by this Court.

And in support of this application, appellees respectfully suggest the following reasons:

FIRST. The long delay to which the creditors of Brown, Bonnell & Co. have already been subjected, by successive appeals, taken apparently for dilatory purposes.

SECOND. The execution of the decree of confirmation involves the transfer of a large manufacturing plant, employing a large number of men, and the beginning of the new year is the most convenient time for making the transfer, and for closing up the business of the receivership.

CHARLES C. BALDWIN AND
CECIL D. HINE,
Solicitors for Appellees.

THE COMMONWEALTH OF PENNSYLVANIA,
Allegheny County, ss.

AFFIDAVIT OF JAMES R. McCREERY.

James R. McCreery, of lawful age, being first duly sworn, deposes and says that he resides at the City of Allegheny, Allegheny County, State of Pennsylvania, and that he is a son of the late William McCreery of said City, who was associated with Henry Tod, Charles C. Baldwin and Cecil D. Hine as Trustees for creditors of Brown, Bonnell & Co., of Youngstown, Ohio.

Said affiant further says that said William McCreery died, at his home in the City of Allegheny, Pennsylvania, on the 16th day of September, A. D. 1891.

JAMES R. McCREERY.

Signed by said James R. McCreery in my presence and sworn to by him before me on this 9th day of December, 1891.

S. C. McCANDLESS,
[SEAL.] *United States Commissioner,*
Western District of Pennsylvania.

THE STATE OF OHIO, }
Mahoning County, ss. }

Cecil D. Hine being duly sworn, deposes and says that he is one of the Trustees for creditors of the corporation of Brown, Bonnell & Co. of Youngstown, Ohio,—acting as such under the written agreement entered into by the creditors of said corporation, under date of April 29, 1884, and that he, in conjunction with his Co-Trustees Henry Tod, Charles C. Baldwin, and the late William McCreery, as Trustees for the creditors who had become parties to said agreement, bid off the real estate of said corporation, which was offered for sale by the Special Master, under the decree of sale, made by the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, rendered on the 23rd day of February. 1886, in the case of Lake Superior Iron Company et al vs Brown, Bonnell & Co. et al, and subsequently affirmed by the Supreme Court of the United States.

Affiant further says that the deed, which the decree of said Circuit Court, confirming said sale, directed said Special Master Commissioner to make and deliver to said purchasing Trustees, has never been made or delivered, owing to the fact that The Leadville Coal Company, Charles S. Worden, George M. Ayer and Amy G. Ayer took an appeal to the Supreme Court of the United States from the decree of said Circuit Court con-

firming said sale, and caused a supersedeas bond to be given upon such appeal. Cecil D. Hine

Signed by said Cecil D. Hine in my presence and by him sworn to before me this 8th day of December, 1891.

W. R. MERRICK,
Notary Public

[SEAL.]

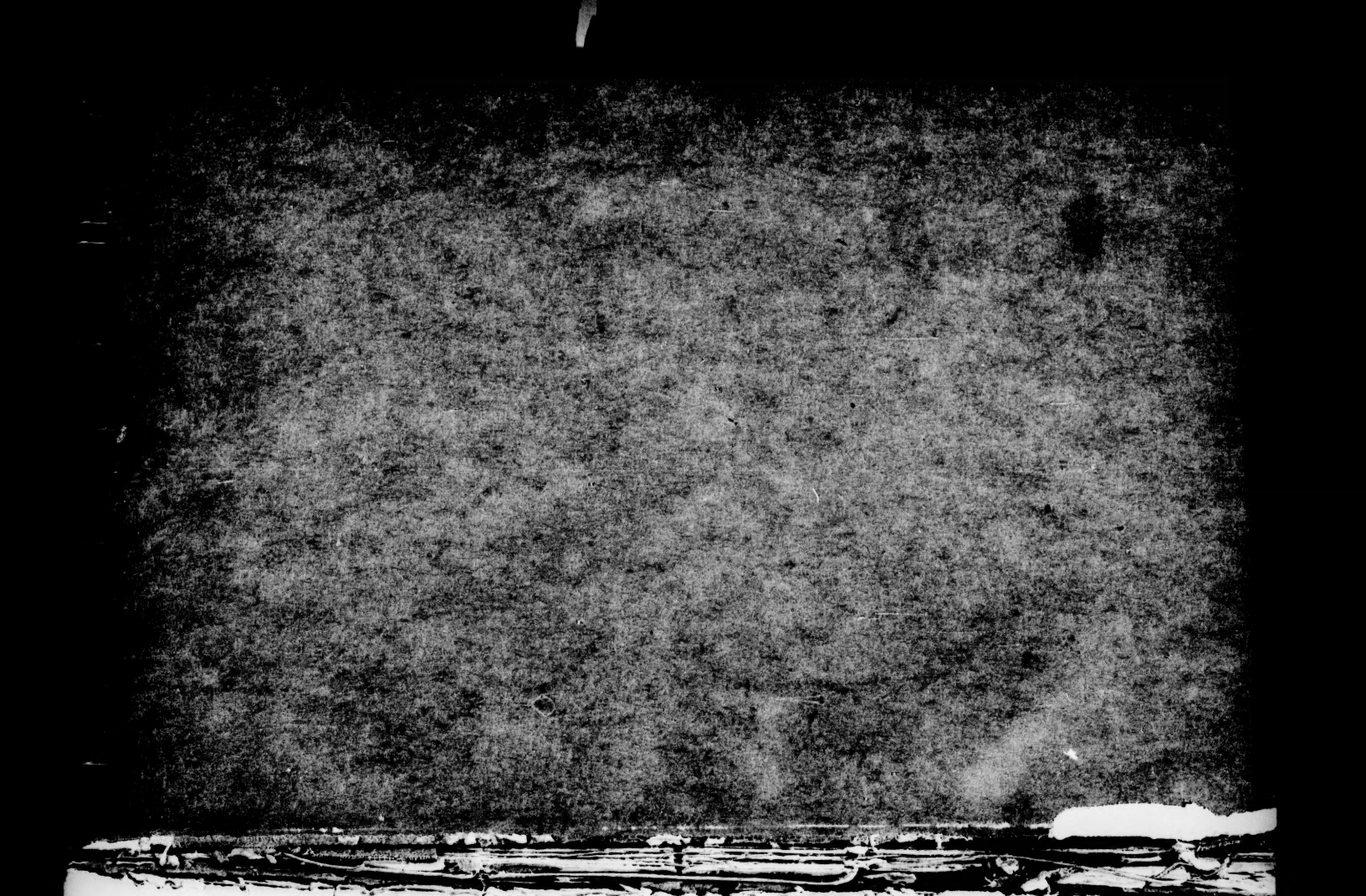
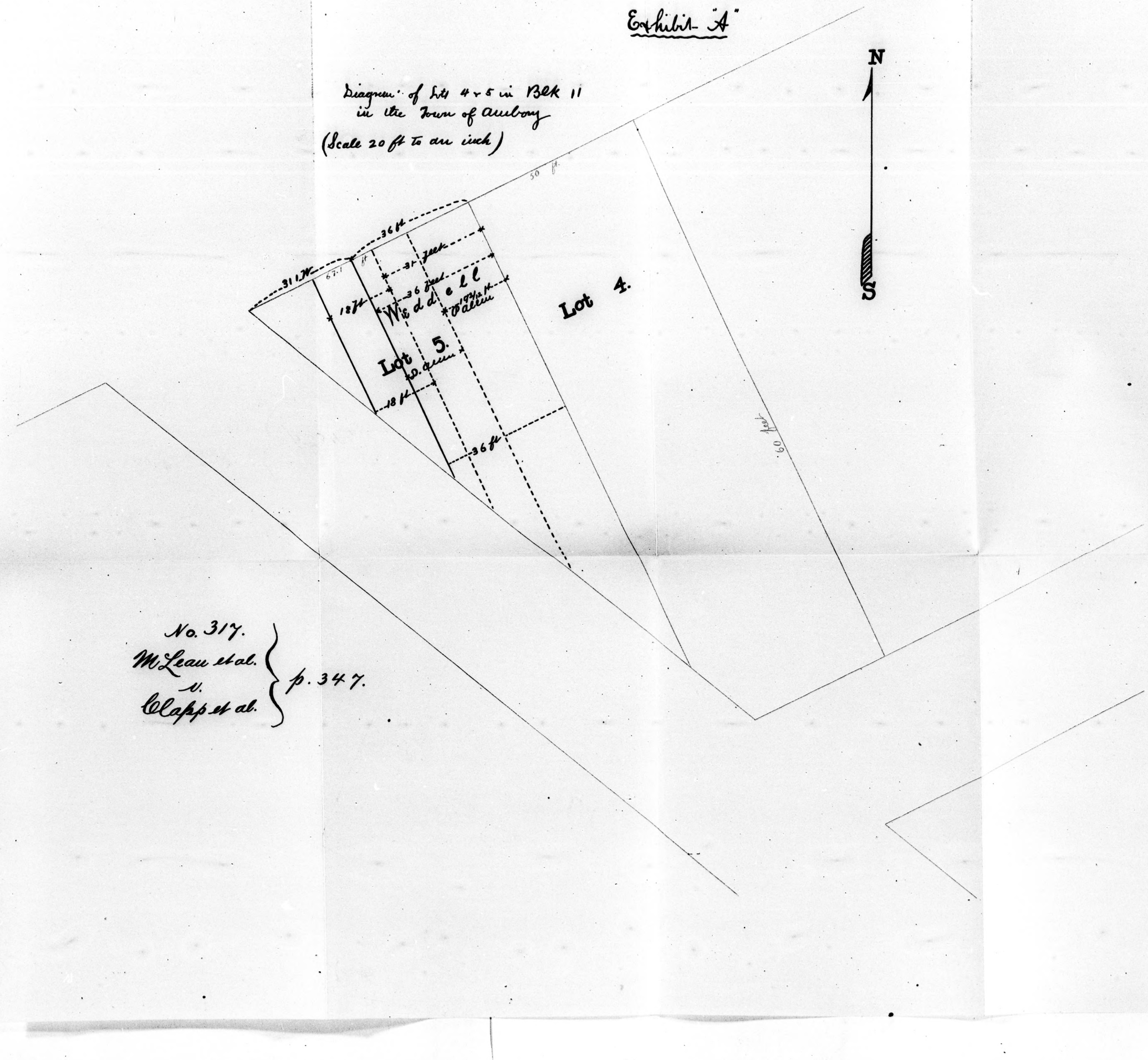


Exhibit "A"

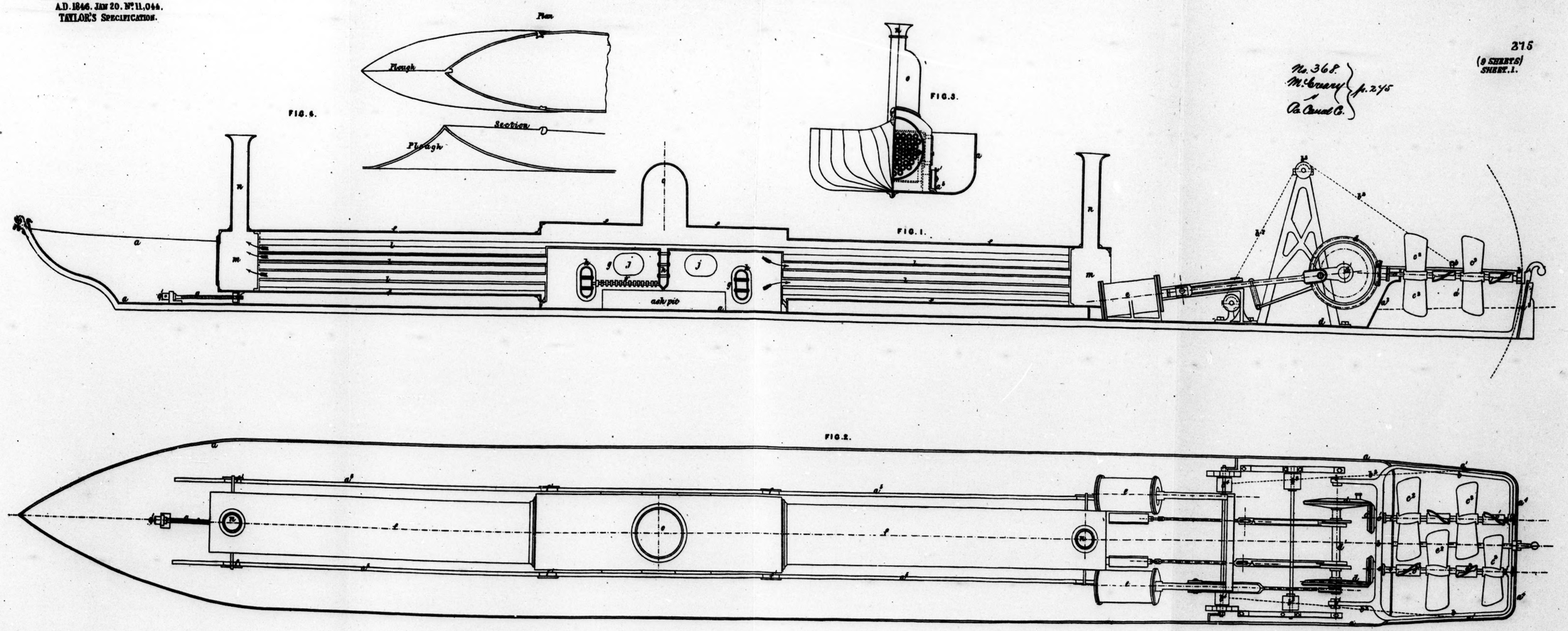
Diagram of Lots 4 & 5 in Blk 11
in the Town of Amboy
(Scale 20 ft to an inch)



No. 317.
McLean et al.
v.
Clapp et al.
} p. 347.

A.D. 1846. JAN 20. No. 11,044.
TAYLOR'S SPECIFICATION.

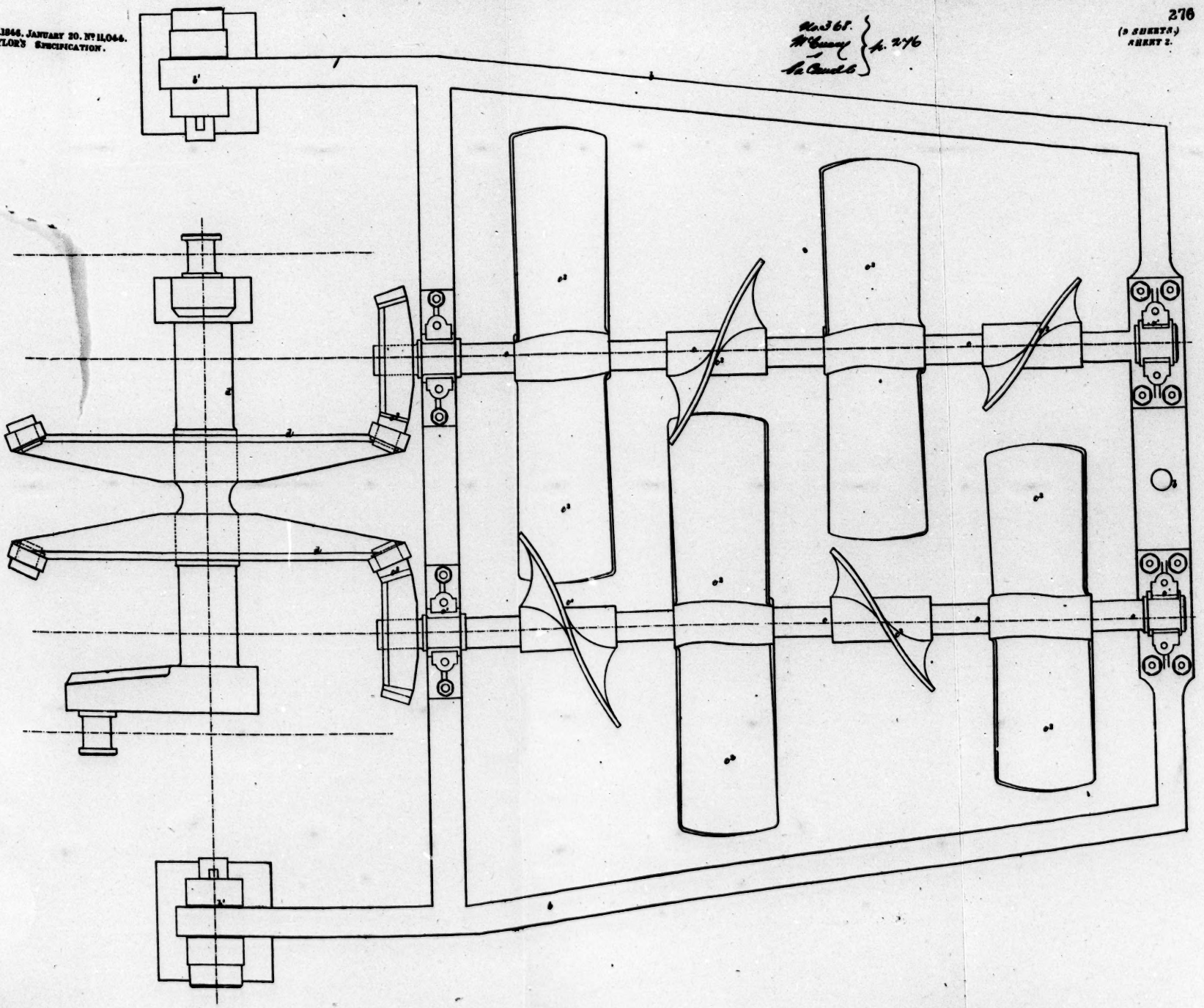
No. 368.
McCreary
Pa. Canal Co.
p. 275



A.D. 1846. JANUARY 20. No. 11,044.
TAYLOR'S SPECIFICATION.

No. 368.
McCreary
Pa. Canal Co.
p. 276

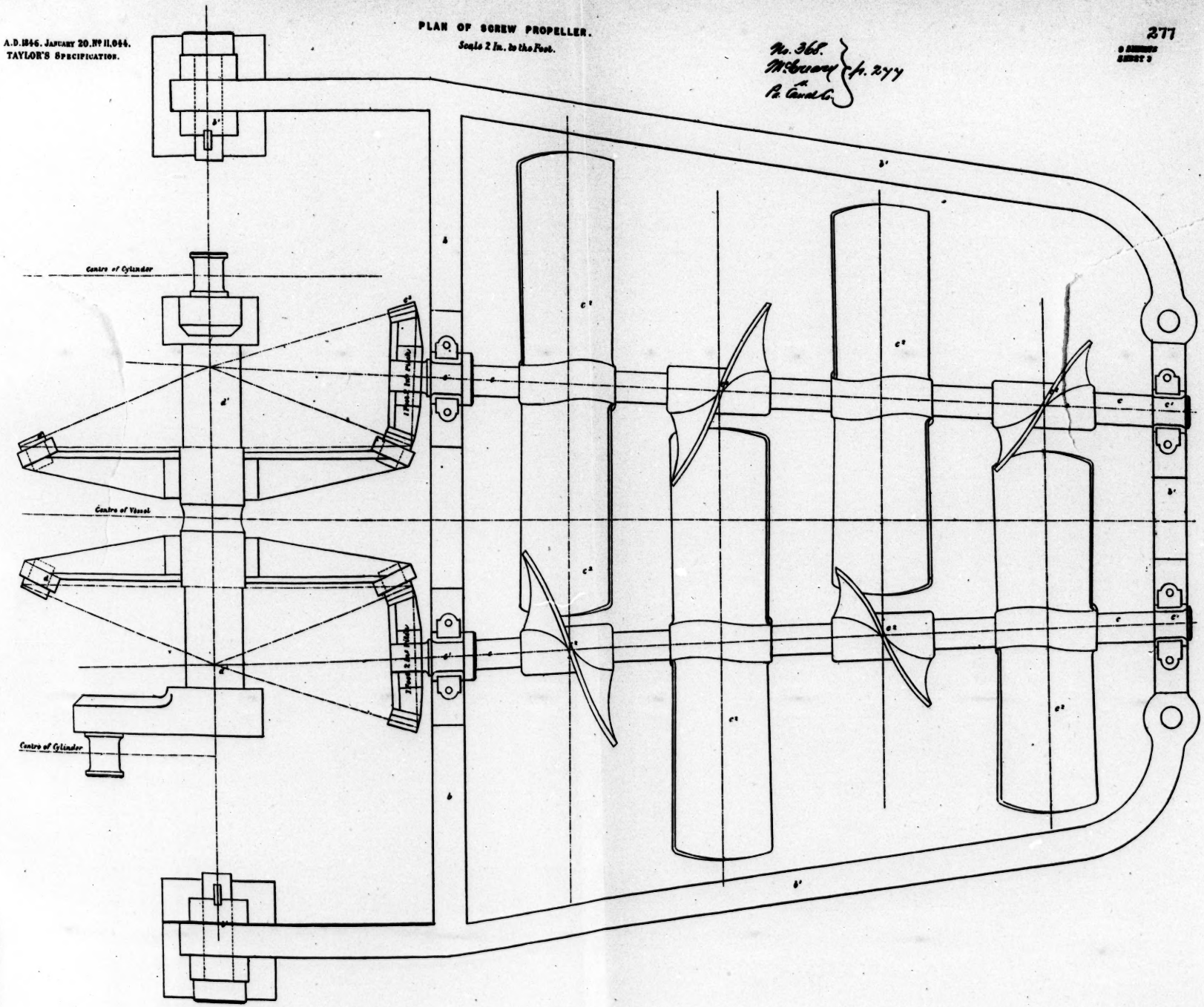
276
(9 SHEETS.)
SHEET 2.



PLAN OF SCREW PROPELLER.

Scale 2 In. to the Foot.

No. 368.
McGreary
&
Pa. Canal Co.
} p. 277



A.D. 1846. JAN 20. No. 11.044.
TAYLOR'S SPECIFICATION.

278
(9 SHEETS)
SHEET. 4.

No. 368.
McCreary
v.
Pa. Canal Co.
p. 278

FIG. 1

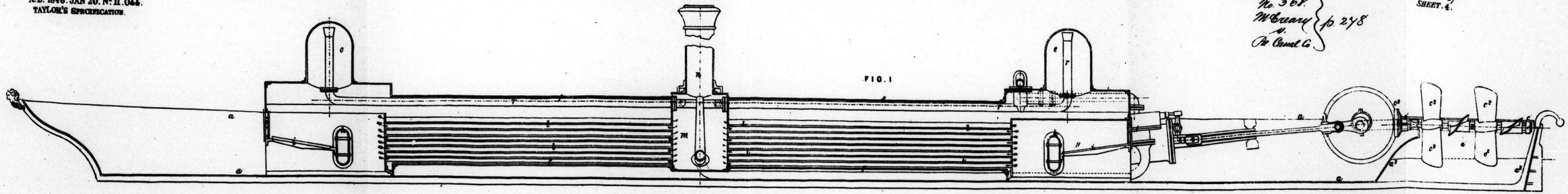


FIG. 2.

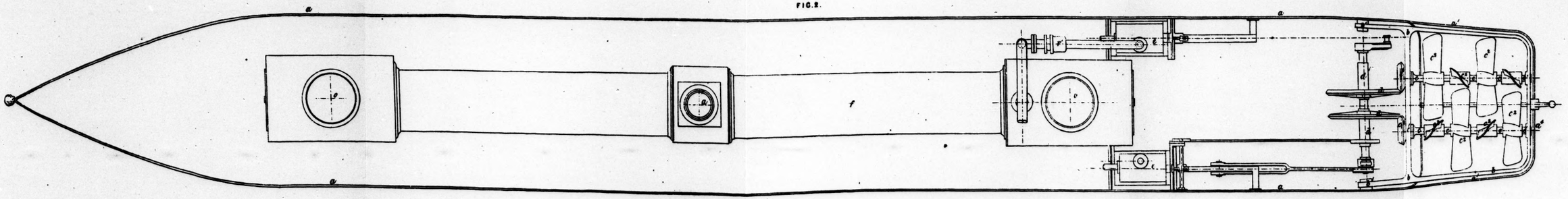


FIG. 1

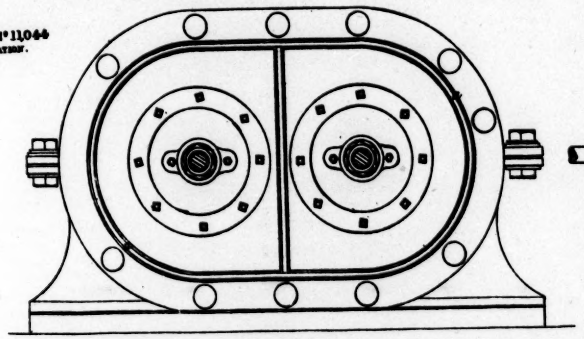


FIG. 4. Section through A.B.

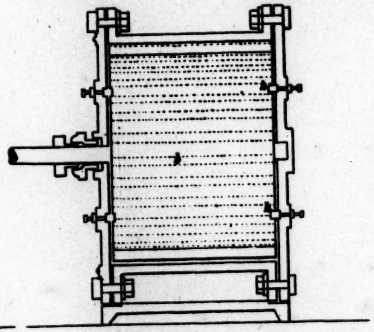


FIG. 6.

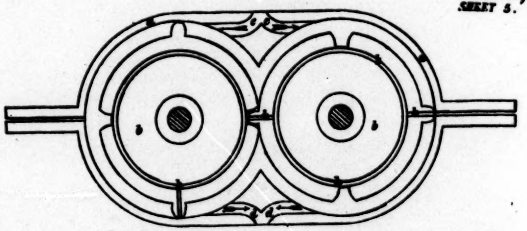
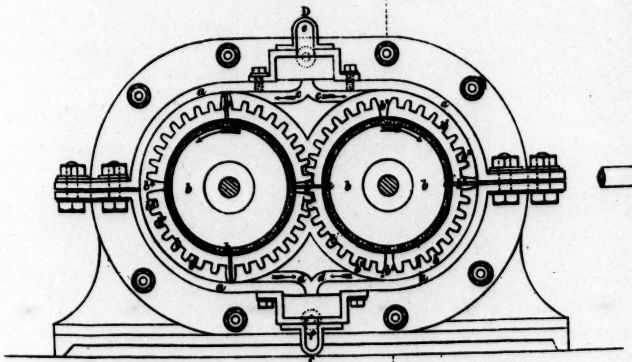
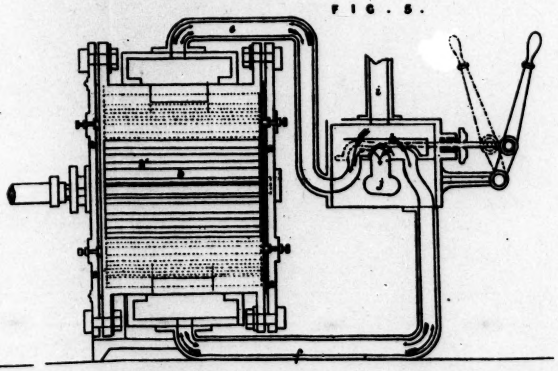


FIG. 2.



Section through . D.

FIG. 5.



No. 368.
M. Cheeney.
v.
Pa. Canal Co.
p. 279.

FIG. 3.

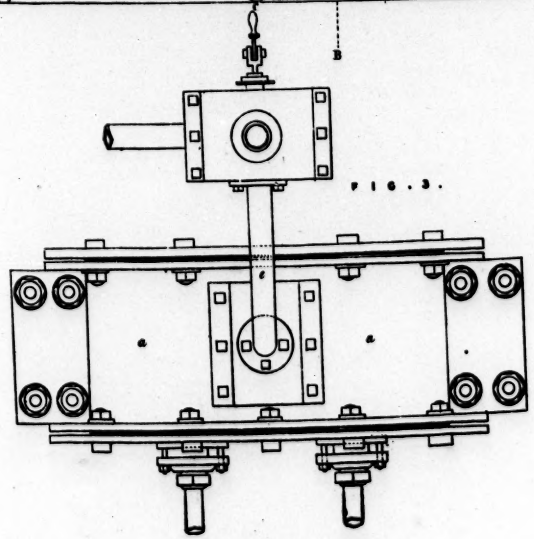


FIG. 7.

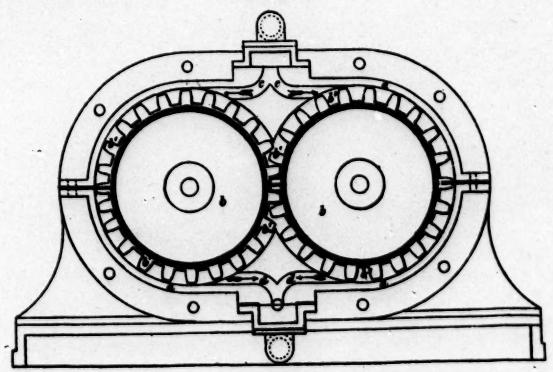


FIG. 1.

No. 368.
M. Greery
v.
Pa. Transit Co.
p. 240

FIG. 2.

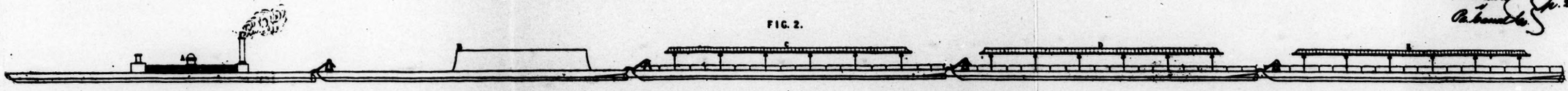


FIG. 3.

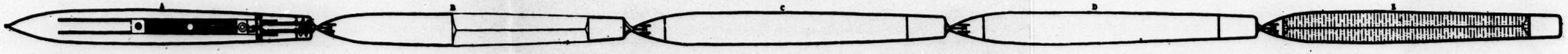


FIG. 4.

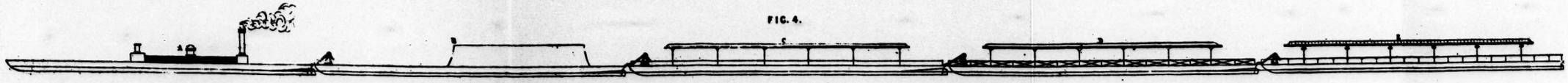


FIG. 5.

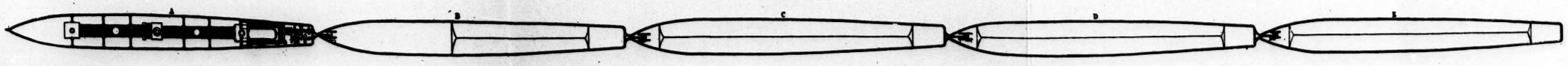


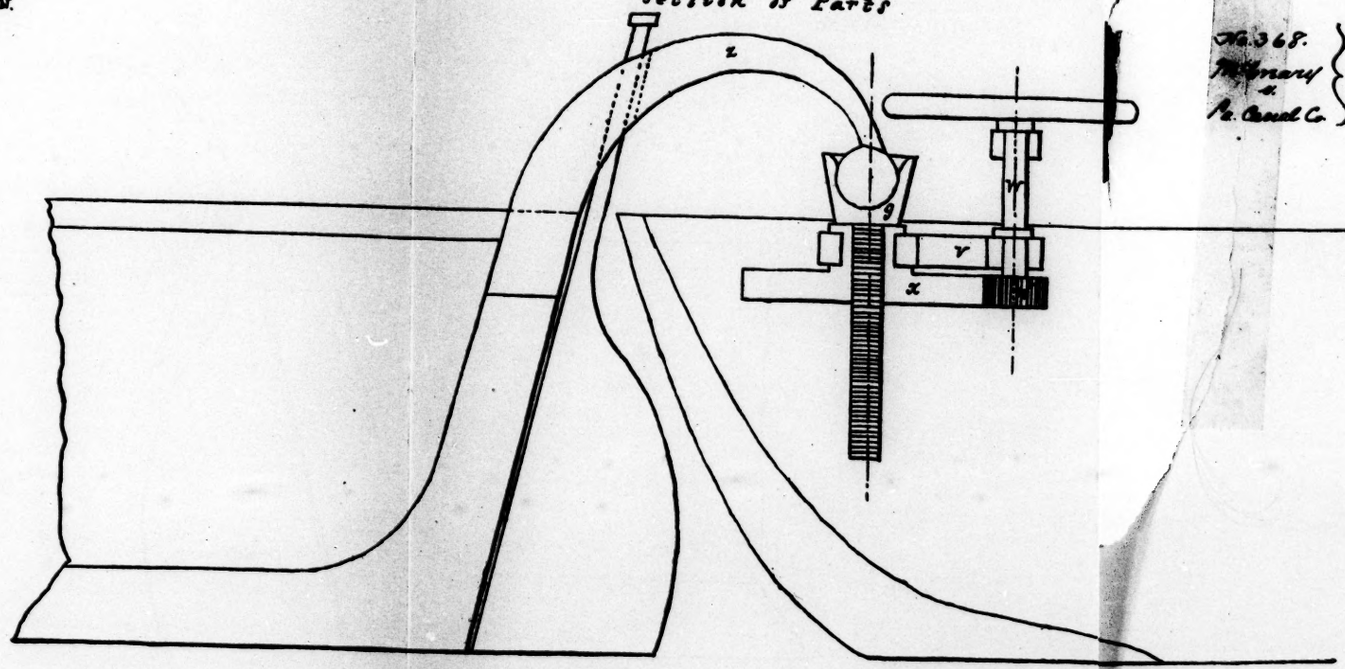
FIG. 6.

A.D. 1848. Jan. 20 No 11 044
TAYLOR'S SPECIFICATION.

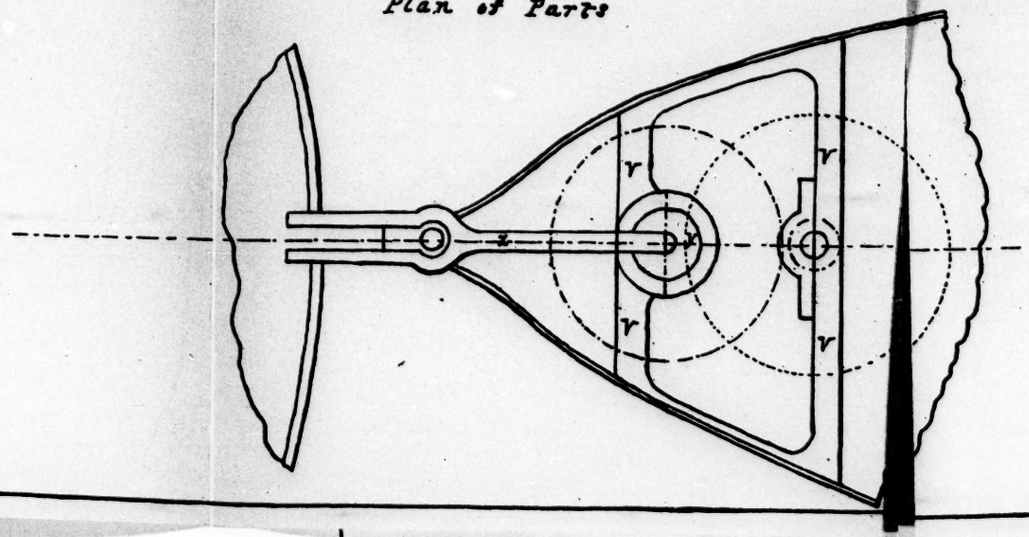
9 SHEETS
SHEET 7.

No. 368.
Mahnary
v.
Pa. Canal Co.
p. 281.

Section of Parts



Plan of Parts



A.D. 1857. JUNE 26. Nº 1795.
BOURNE'S COMPLETE SPECIFICATION

292

(3 SHEET)
SHEET I

No. 368.
McEvery
v.
Pa. Canal Co.
p. 292.

FIG. 1

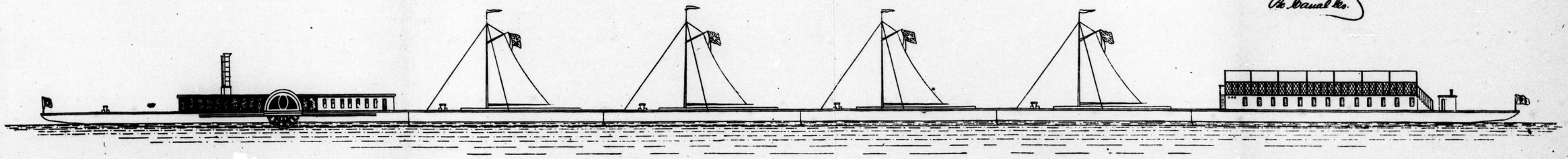
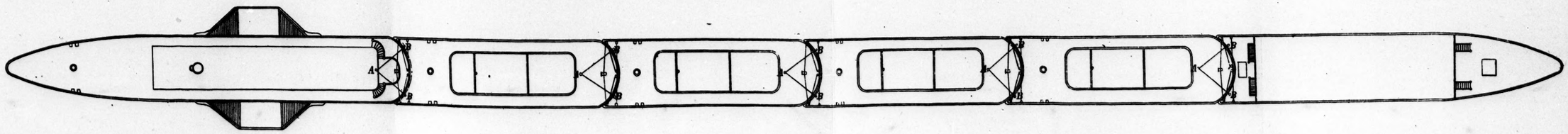


FIG. 2



A.D. 1857. June 26. No. 1795.
BOURNE'S Complete Specification

293
(3 SHEET)
SHEET II

No. 368.
McCreary
v.
Pa. Canal Co.
p. 293.

FIG. 1.

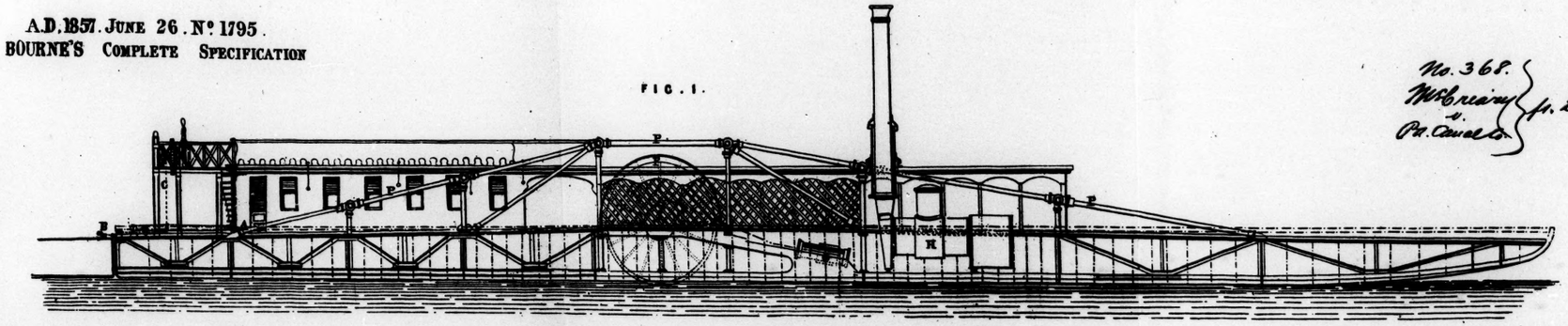


FIG. 3.

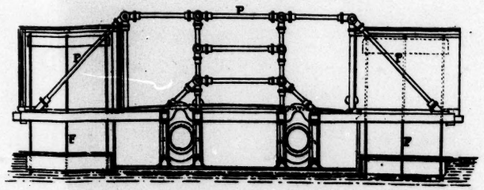


FIG. 2.

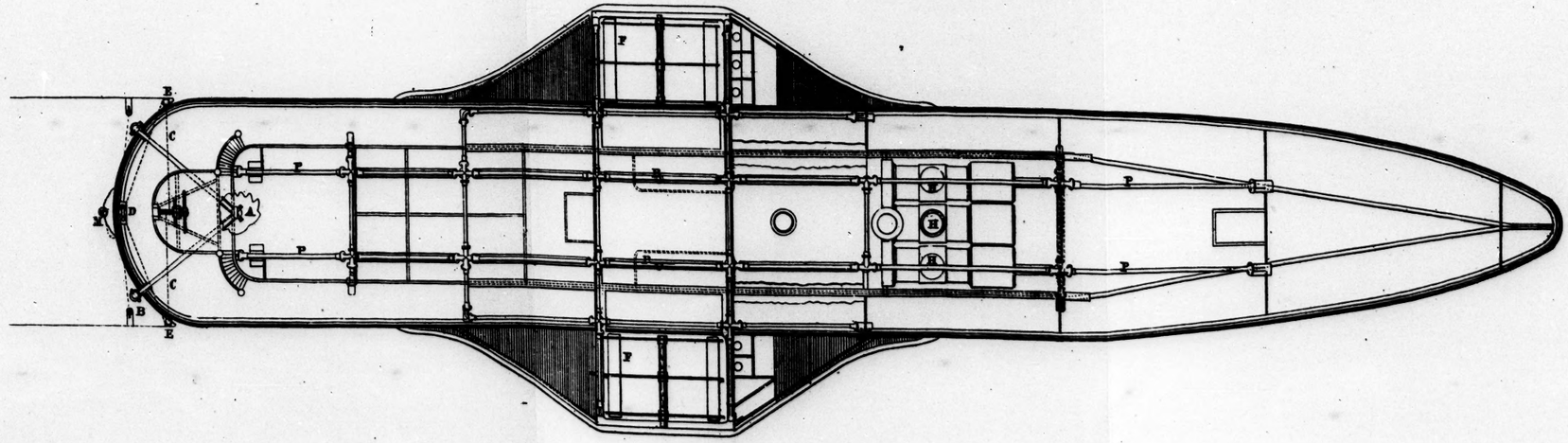
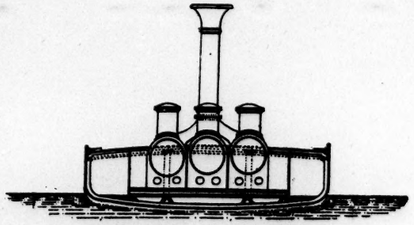


FIG. 4.



A.D. 1857. June. 26. No 1795.
BOURNE'S Complete Specification.

294

SHEET. 3.
(3 SHEETS)

No. 368.
W. Creary
A. Ford Co.
p. 294

FIG. 1.

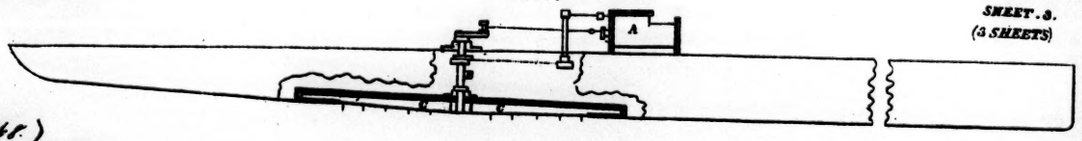
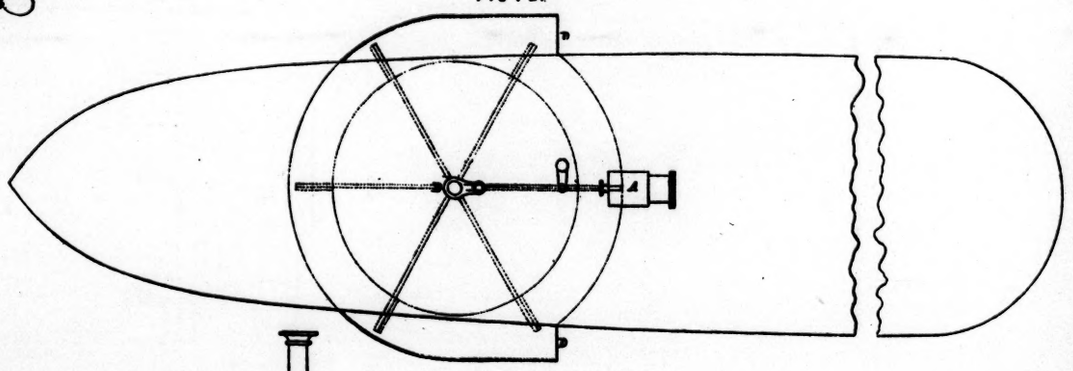


FIG. 2.



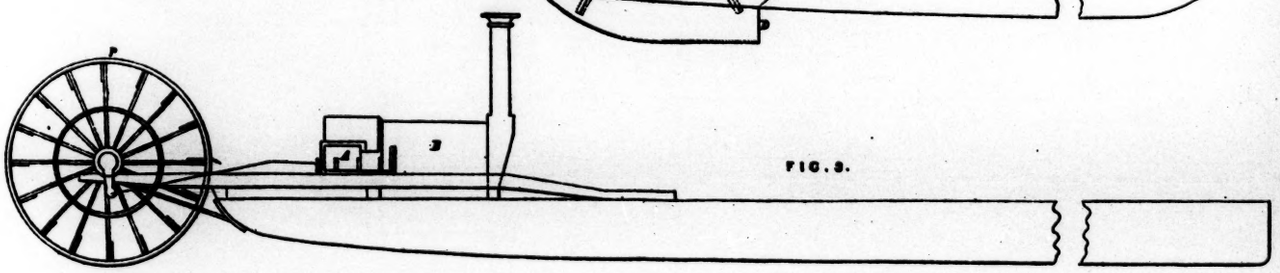


FIG. 3.

FIG. 4.

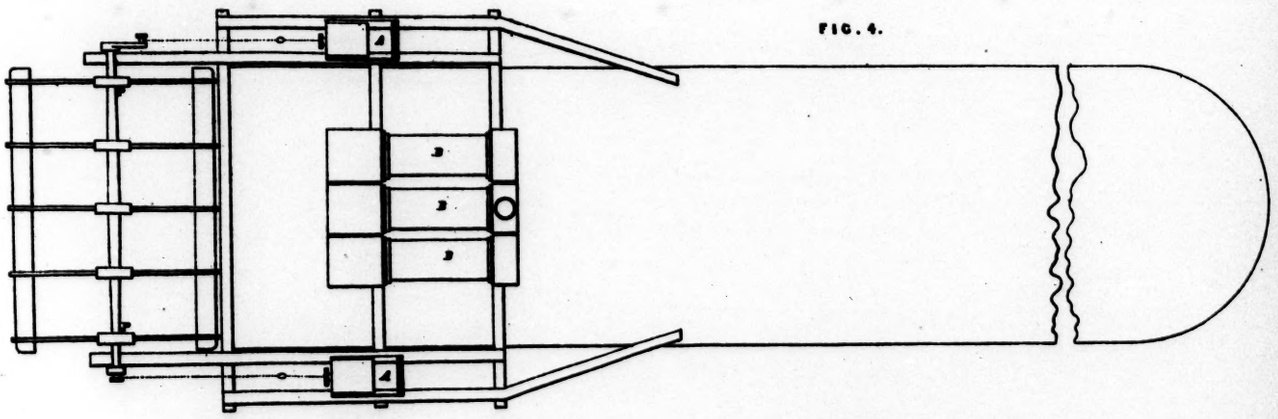
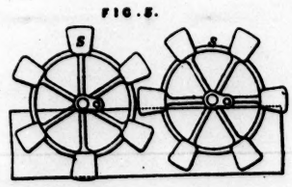


FIG. 5.



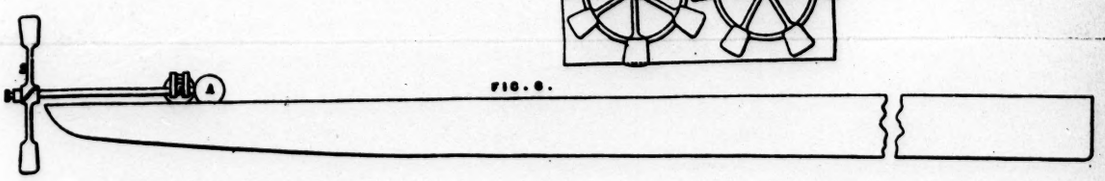
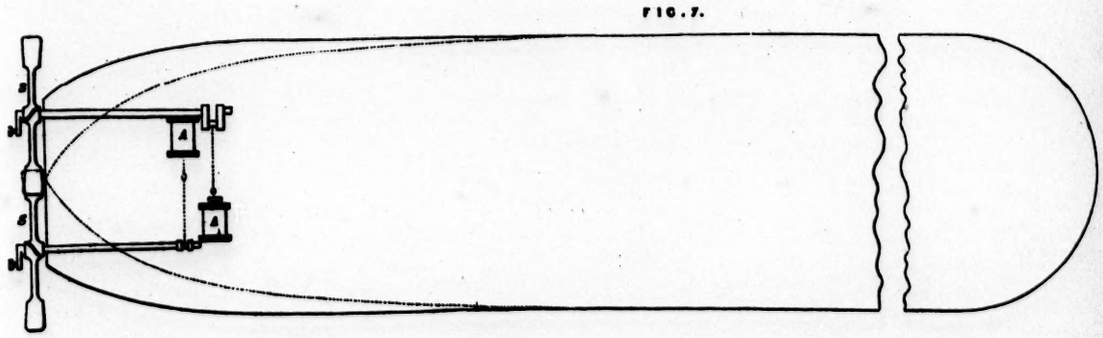


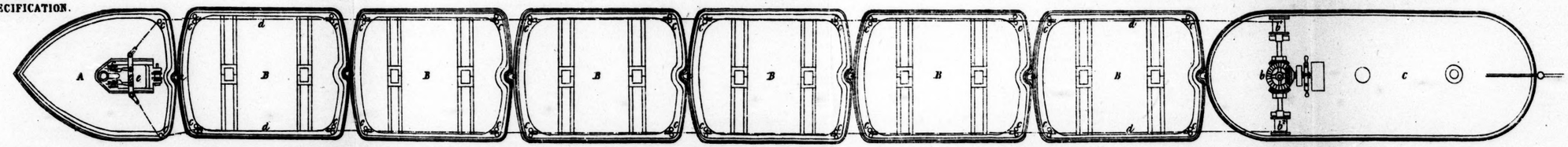
FIG. 6.

FIG. 7.



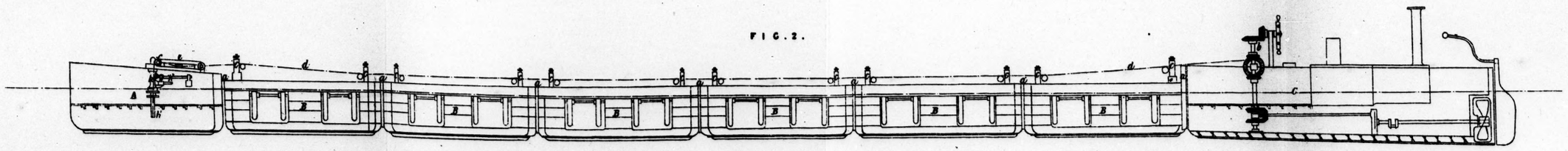
A.D. 1862. FEB. 7. N° 330.
BARTHOLOMEW'S SPECIFICATION.

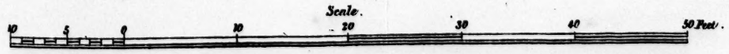
FIG. 1.



No. 368.
McGreary
v.
Pa. Canal Co.
} p. 302

FIG. 2.



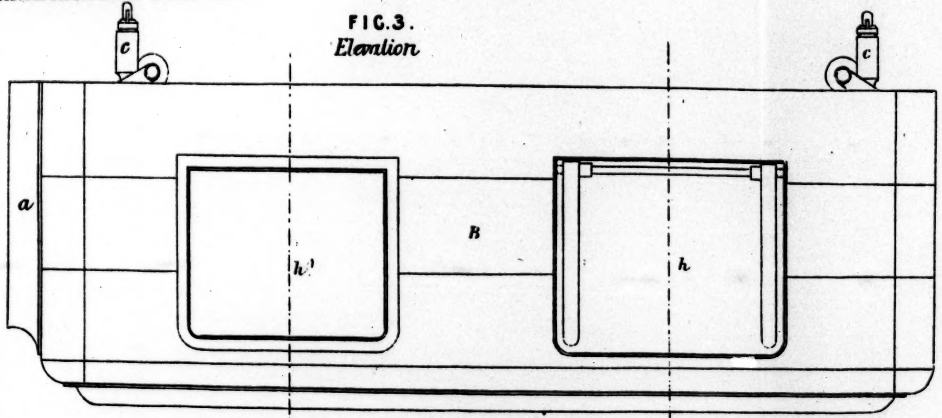


A.D. 1862. Feb 7. No. 330.
BARTHOLOMEW'S Specification

303
(2 SHEETS)
SHEET 2

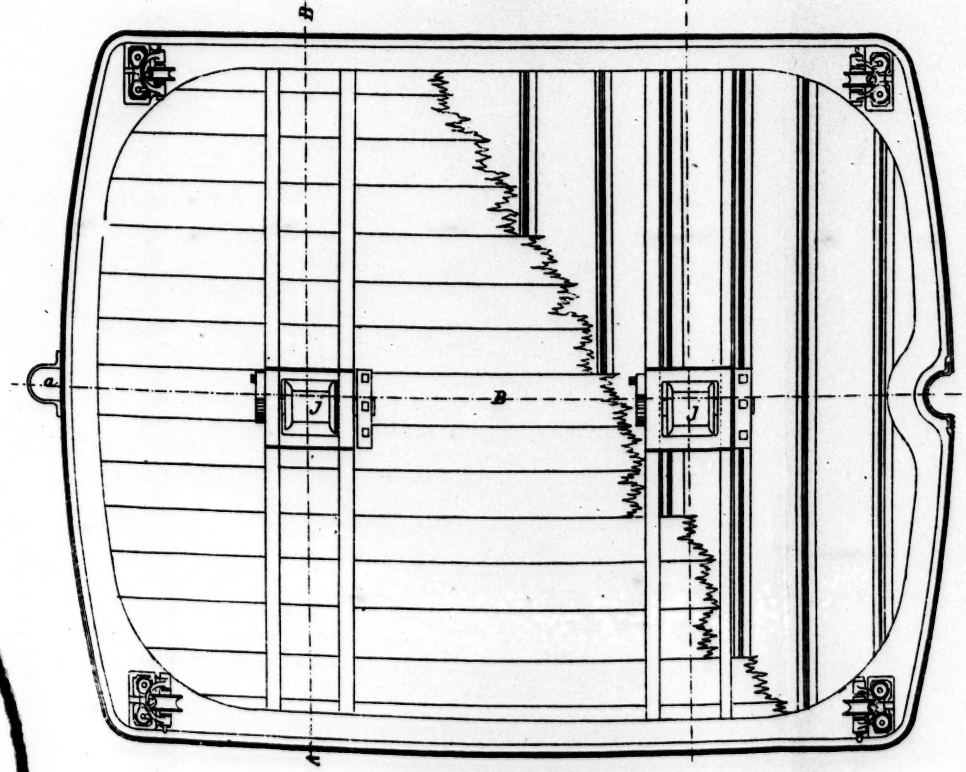
No. 368.
McCreary v. Pa. Canal Co. } p. 303.

FIG. 3.
Elevation



Scale

FIG. 4.
Plan



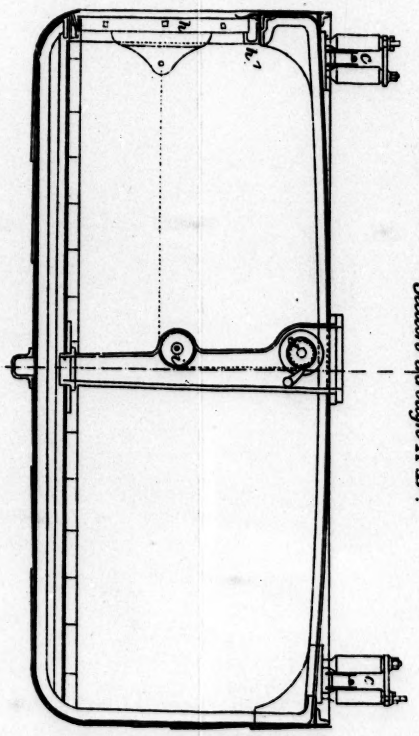


FIG. 5.
Section through A B.